

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

IN THE MATTER OF) Docket No. BLNR-CC-HA-22-02
)
The Petition of Mauna Kea Hui for) MINUTE ORDER NO. 3;
a Declaratory Order Filed May)
24,2021) Exhibits A-I
)
) CERTIFICATE OF SERVICE
)
)
)

MINUTE ORDER NO. 3

On May 24, 2021, Petitioners MAUNA KEA ANAINA HOU, KEALOHA PISCIOTTA, CLARENCE KUKAUAKAHI CHING, DEBORAH J. WARD, PAUL NEVES, and KAHEA: THE HAWAIIAN-ENVIRONMENTAL ALLIANCE (collectively, "Petitioners" or the "Mauna Kea Hui") filed a "Motion to Reopen Hearing to Hear Motion to Confirm Non-Compliance With Condition No. 4, or Alternatively, Petition for Declaratory Orders Concerning the Same" (the "Motion") under the caption of Contested Case No. BLNR-CC-16-002. The Motion is attached hereto as **Exhibit A**.

Contested Case No. BLNR-CC-16-002 was fully decided upon the issuance of Findings of Fact, Conclusions of Law and Decision and Order (hereinafter, the "D&O") on September 27, 2017. The D&O was upheld by the Hawai'i Supreme Court in *Matter of Conservation Dist. Use Application HA-3568*, 143 Hawai'i 379,431 P.3d 752 (2018).

The Board of Land and Natural Resources ("Board") considers Petitioner's Motion as a petition for a declaratory ruling pursuant to Hawai'i Revised Statutes ("HRS")§ 91-8 and HAR§ 13-1-27 rather than a motion for reconsideration of the D&O. On October 20, 2021 the Board issued Minute Order 1 which granted the Petitioners' motion to the extent it seeks to open a new proceeding for a declaratory ruling for the limited purpose of determining whether UHH has complied with Condition No. 4 of the CDUP. Minute Order 1 is attached hereto as **Exhibit B**.

The parties named in the petitioners' Certificate of Service were invited to file briefings in response to the motion and replies in support of the motion. On October 31, 2021 The Temple of Lono filed a brief in response to the motion (**Exhibit C**). On November 3, 2021 Cindy Freitas filed a brief in response to the motion (**Exhibit D**). On November 4, 2021 TMT International Observatory LLC filed a memorandum in opposition to the Mauna Kea Hui motion (**Exhibit E**). On November 4, 2021 the University of Hawai'i at Hilo filed a joinder to TMT International Observatory's memorandum (**Exhibit F**). On November 4, 2021 Perpetuating Unique Educational Opportunities ("PUEO") filed a joinder to TMT International Observatory's memorandum (**Exhibit G**). On December 3, 2021 the Flores-Case 'Ohana filed a memorandum in support of Mauna Kea Hui's motion (**Exhibit H**).

The index of the responses and replies is attached hereto as **Exhibit I**, and all filings are available online at dlnr.hawaii.gov/occl/tmt, Table 3, "2021 Petition."

The Board will consider the arguments raised in the motion, responses, and replies at a regularly scheduled Board Meeting on July 28 commencing at 9:30 am at 1151 Punchbowl St., Room 132 (Kalanimoku Building), Honolulu, Hawai'i.

Each party who has filed a motion or a response to the motion shall have fifteen minutes to present oral arguments before the Board. Time may not be assigned from one party to another. The Board may elect to ask questions of any party once they have completed their argument; this time will not count towards the fifteen-minute total.

The Petitioners Mauna Kea Hui, represented by Richard Naiwieha Wurdeman and the Law Office of Bianca Isaki, shall present first. The Temple of Lono, Cindy Freitas, and the Flores-Case 'Ohana, joining as a pro se parties, shall present afterwards. The Respondents TMT International Observatory, the University of Hawai'i at Hilo, and PUEO shall present afterwards. Parties wishing to testify remotely shall submit their request to the Custodian of the Records at michael.cain@hawaii.gov.

Petitioners may elect to reserve time from their allotted fifteen minutes for rebuttal argument. Rebuttal arguments will take place once all parties have completed their initial arguments.

No additional filings will be taken in this case.



DAWN N.S. CHANG, Chairperson
Board of Land and Natural Resources

AIMEE KELI'I BARNES, Board Member

vernon char

VERNON CHAR, Board Member



KAREN ONO, Board Member

DOREEN NĀPUA CANTO, Board Member

Riley Smith

RILEY SMITH, Board Member



WESLEY KAIWI NUI YOON, Board
Member

DATED: Honolulu, Hawai'i: Jul 3, 2023

RICHARD NAIWIEHA WURDEMAN 6015-0
Attorney at Law, A Law Corporation
Pauahi Tower, Suite 720
1003 Bishop Street
Honolulu, Hawai'i 96813
(808) 536-0634
RNWurdeman@RNWLaw.com

LAW OFFICE OF BIANCA ISAKI
Bianca K. Isaki 9977
1720 Huna Street, 401B
Honolulu, Hawai'i 96837
(808) 927-5606
bianca.isaki@gmail.com

Attorneys for the Mauna Kea Hui
MAUNA KEA ANAINA HOU, KEALOHA PISCIOTTA;
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 REOPEN
District Use Permit (CDUP) HA-3568 for the	)	HEARING TO HEAR MOTION TO CONFIRM
Thirty Meter Telescope at the Mauna Kea	)	NON-COMPLIANCE WITH CONDITION NO. 4,
Science Reserve, Kaohe Mauka, Hamakua	)	OR, ALTERNATIVELY, PETITION FOR
District, Island of Hawai'i, TMK (3) 4-4-	)	DECLARATORY ORDERS CONCERNING THE
015:009	)	SAME; MEMORANDUM IN SUPPORT OF
	)	MOTION; DECLARATION OF CLARENCE
	)	KUKAUAKAHI CHING; EXHIBITS "01"- "07";
	)	CERTIFICATE OF SERVICE
)	

MAUNA KEA HUI'S MOTION TO REOPEN HEARING TO HEAR MOTION TO CONFIRM NON-COMPLIANCE WITH CONDITION NO. 4, OR, ALTERNATIVELY, FOR DECLARATORY ORDERS CONCERNING THE SAME

MAUNA KEA ANAINA HOU, an unincorporated association, KEALOHA PISCIOTTA;
CLARENCE KUKAUAKAHI CHING; DEBORAH J. WARD; PAUL K. NEVES; and KAHEA: THE
HAWAIIAN ENVIRONMENTAL ALLIANCE, a domestic non-profit corporation ("Mauna Kea Hui")

respectfully submit this motion to reopen contested case proceedings for the limited purpose of hearing a motion to confirm Permittee UNIVERSITY OF HAWAI‘I HILO’s (UHH) has not complied with Condition No. 4 of Conservation District Use Permit (CDUP) HA-3568 (Condition No. 4) in the above captioned proceedings. In the alternative, this submission may be construed as a petition for declaratory orders also concerning UHH’s present non-compliance with Condition No. 4 to the extent that such relief would be forthcoming under the alternative procedure. Reopening the contested case hearing is appropriate in light of the reasons UHH is unable to comply with permit conditions and has incorrectly represented to Department administrators that it has so complied. Due process requires the Board to allow all parties to present evidence prior to making a discretionary decision on whether UHH’s actions merit extension of deadlines.

This motion is submitted pursuant to Hawai‘i Revised Statutes §§ 91-8, 91-9, 91-10, and 91-13.5; and Hawai‘i Administrative Rules §§ 13-1-11, -12(d), -27, -34; -5-43.

DATED: Honolulu, Hawai‘i

May 24, 2021

RICHARD NAIWIEHA WURDEMAN
ATTORNEY AT LAW, A LAW CORPORATION

Bianca Isaki

LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI
Attorneys for Petitioners

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 Use Permit (CDUP) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Kahohe Mauka, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009)
)
)
)

MEMORANDUM IN SUPPORT OF MOTION

MAUNA KEA ANAINA HOU, an unincorporated association, KEALOHA PISCIOTTA; CLARENCE KUKAUAKAHI CHING; DEBORAH J. WARD; PAUL K. NEVES; and KAHEA: THE HAWAIIAN ENVIRONMENTAL ALLIANCE, a domestic non-profit corporation (“Mauna Kea Hui”) respectfully submit this motion to reopen contested case proceedings for the limited purpose of hearing and deciding a motion to confirm Permittee UNIVERSITY OF HAWAII’I HILO’s (UHH) has not complied with Condition No. 4 of Conservation District Use Permit (CDUP) HA-3568 (Condition No. 4) in the above captioned proceedings. In the alternative, this submission may be construed as a petition for declaratory orders also concerning UHH’s present non-compliance with Condition No. 4 to the extent that such relief would be forthcoming under the alternative procedure. Reopening the contested case hearing is appropriate in light of the reasons UHH is unable to comply with permit conditions and has incorrectly represented to Department administrators that it has so complied. Due process requires the Board to allow all parties to present evidence prior to making a discretionary decision on whether UHH’s actions merit extension of deadlines.

I. Background

On September 27, 2017, the Board approved the UHH permit when it issued Findings of Fact, Conclusions of Law, and a Decision and Order in the above-captioned proceedings (2017 Board Order). The UHH permit was thus subject to Standard Condition No. 4, which states:¹

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.

¹ Standard Condition No. 4 is required under OCCL rules. HAR §13-5-42(a)(8).

By letter received July 30, 2019, UHH requested a two year extension of time to comply with Standard Condition No. 4 of the permit. Declaration of Clarence Kukauakahi Ching (Ching Decl.) ¶2, Exh. 01. In its request, UHH cited June 25, 2019 testing of GPS equipment and partial survey of the Submillimeter Array access road and July 12, 2019 survey of underground fiber optic and electrical lines as evidence that it had initiated construction in addition to its two-year extension request. Exh. 01 at 4.

By letter dated July 30, 2019, Suzanne Case, chair of the Board, wrote to UHH, recognizing the June 25, 2019 and July 12, 2019 actions and that UHH was unable to move its construction equipment to the project site on July 15, 2019. Ching Decl. ¶2; Exh. 02 at 1-2. Under these facts, the Board chair determined UHH “made a good faith effort to comply with the deadlines contained in the permit” and granted the extension to September 26, 2021 without a hearing.

By letter dated April 28, 2021, UHH wrote to the Administrator of the Office of Conservation and Coastal Lands (OCCL) to notify him of “initiation of work and/ or construction” for the TMT in compliance with General Condition No. 4. Ching Decl. ¶3; Exh. 03. In support of their assertion that construction had initiated, UHH cited activities taking place between June 20, 2019 and July 16, 2019, prior to the Board Chair’s July 30, 2019 letter granting UHH’s extension request. Exh. 03 at 2. In addition to the June 25, 2019 and July 12, 2019 actions, UHH cited inspections for invasive species on July 15, 2019, a “Kick-Off Meeting” between TMT and its contractors to discuss construction on July 8, 2019, and removal of an ahu on June 20, 2019. *Id.*

The April 28, 2021 letter posted to the DLNR website has a stamp stating “approved”, signed by Suzanne Case and dated May 4, 2021. Exh. 03 at 3.

II. Mauna Kea Hui is a party to proceedings on the UHH permit.

CDUP No. HA-3568 permits UHH to allow the Thirty-Meter Telescope International Observatory (TMT) to construct the largest telescope in the world and the tallest building on the island in the fragile ecosystem and highly sacred grounds of the summit of Mauna Kea. Parties have constitutional rights under articles XI, §9 and XII, §7 to a clean and healthful environment and to protections for their traditional and customary practices as has been recognized in several Hawai‘i Supreme Court opinions concerning this permit. *In re Conservation District Use Application HA-3568*, 143 Hawai‘i 379, 431 P.3d 752 (2018); *Mauna Kea Anaina Hou v. Board of Land & Natural Resources*, 136 Hawai‘i 376, 363 P.3d 224 (2015). Mauna Kea Hui members are parties to this contested case, through which they seek to protect their rights.

III. Mauna Kea Hui’s positions and supporting authorities.

Mauna Kea Hui’s positions are: (1) DLNR incorrectly approved UHH’s claims to have initiated

work on the land or TMT construction; (2) the DLNR chairperson's summary approval of UHH's request prejudiced the due process rights of the Mauna Kea Hui because the reasons UHH cannot comply with Condition No. 4 require full examination by the Board, at which time the Board should reconsider its initial grant of the permit in 2017; (3) UHH's letter to OCCL constituted an improper request for a determination of conditions exercised under an unlawful rule; and, (4) UHH failed to provide supportive documentation for its claim to have initiated work on the land or construction of the TMT.

A. DLNR incorrectly approved UHH initiation of work on the land or TMT construction.

Extensions of time to initiate UHH's project were require to be "based on supportive documentation from the applicant." HAR §13-5-43(b). Documents submitted by UHH consisted in a three page letter that rather established UHH previously conceded its actions did not constitute initiation of work on the land or TMT construction and constituted unpermitted removal of structures in the conservation district. Exh. 03. UHH's submissions are deficient to meet requirements of the rule and the DLNR chairperson clearly exceeded her authority in approving UHH's request. *Id.* at 3.

1. *DLNR chair is estopped from asserting actions constituting good cause to extend time to comply with Condition No. 4 also constitute compliance with Condition No. 4.*

UHH's "notice of initiation of work and/or construction" apparently sought approval from DLNR staff for their interpretation of 2019 actions as "work done or construction to be done on the land" in compliance with Condition No. 4. Exh. 03 at 1. DLNR's chair approved the same a day after receipt. *Id.* at 3. Previously by letter dated July 30, 2019, DLNR's chair, then signing as, chair of the Board, recognized substantially the same June 25, 2019 and July 12, 2019 actions as good cause for the first extension of the permit as those UHH again cited in its May 3, 2021 letter as reasons that it had complied with Condition No. 4. *Compare* Exh. 02 at 1-2 *and* Exh. 03 at 1-2. That is, the DLNR chair's previous determination that 2019 actions constituted good cause for an extension to September 26, 2021 to initiate construction cannot also constitute initiation of construction under the doctrine of judicial estoppel. *See Rosa v. CWJ Contractors, Ltd.*, 4 Haw. App. 210, 218, 664 P.2d 745, 751 (1983) ("[a] party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by him, at least where he had, or was chargeable with, full knowledge of the facts, and another will be prejudiced by his action.") (quoting 28 Am. Jur.2d Estoppel and Waiver § 68, at 694-95 (1966)).

DLNR's July 30, 2019 approval letter request for extension took the position that UHH's testing of GPS equipment, partial survey of the Submillimeter Array access road, and survey of underground fiber

optic and electrical lines did not constitute work or construction on the land, but rather were good cause to extend the time for compliance. Exh. 01. DLNR cannot recognize the same actions as both reasons to extend time for Condition No. 4 compliance and also, nearing the expiry of that extension, as evidence of Condition No. 4 compliance. Doing so clearly exceeds the bounds of reason and violates principles of judicial estoppel.

2. *No construction or work on land was initiated under the plain and ordinary meaning of the terms.*

UHH has not initiated work “on the land” or TMT construction under the plain, ordinary meaning of the terms “work . . . on the land” or “construction to be done[.]” HAR §13-5-42(a)(8) (“Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed[.]”).

“To effectuate a statute's plain language, its words must be taken in their ordinary and familiar signification, and regard is to be had to their general and popular use. In conducting a plain meaning analysis, [a] court may resort to legal or other well accepted dictionaries as one way to determine the ordinary meaning of certain terms not statutorily defined.” *Wells Fargo Bank, N.A. v. Omiya*, 142 Hawai'i 439, 449-50, 420 P.3d 370, 380-81 (2018). “Construction” is defined to mean the “building of something, typically a large structure.” Lexico.com by *Oxford English Dictionary* (accessed May 20, 2021). Read *in pari materia*, the term “work . . . on the land” did not mean, for instance, sitting on the parcel and working on a laptop, but rather ground-disturbing work associated with the building of the TMT. *Wells Fargo*, 142 Hawai'i at 450, 420 P.3d at 381 (“laws in *pari materia*, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called upon in aid to explain what is doubtful in another.”).

Activities UHH claim occurred as “work on land” or “construction” are so far outside of commonly understood definitions as to constitute a *de facto* revision of permit conditions that is outside of the DLNR chair’s authority and is not permitted under any rule. UHH April 28, 2021 letter additionally listed inspections for invasive species, meeting with contractors, and removal of an ahu, which also do not constitute initiation of construction. Inspections of vehicles for compliance with invasive species requirements are not “work on the land” and do not construct the TMT. Nor do “discussions” with contractors. All actions alleged to constitute compliance with Condition No. 4 took place prior to UHH’s July 30, 2019 request for extension.

3. *Unpermitted destruction of the ahu supports the need for Board review of its permit approval.*

To the extent UHH's destruction of an "unpermitted" ahu occurred on the TMT site, UHH failed to obtain a permit for this purpose. Permits are required for "land use", which is defined to include: "grading, **removing**, harvesting, dredging, mining, or extraction of any material or natural resource on land" and the "construction, reconstruction, **demolition**, or alteration of any structure, building, or facility on land." HAR §13-5-2 (emphasis added). UHH's alleged unpermitted removal of an ahu did not constitute construction of the TMT and supports the need for further Board oversight.

In any case, UHH's action is more so evidence of its continued inability to initiate construction of the TMT than of having initiated construction or work on the land. Construction of ahu, including and especially those that are unpermitted, are evidence of ongoing and vibrant traditional and cultural practices that have not been adequately addressed or protected under the current permit. Ching Decl. ¶9. That is, the thriving of Hawaiian cultural practice has given rise to expanded awareness and activity on Mauna Kea that includes constructing ahu and protection of these lands as part of a sacred trust. *Id.* ¶10. Additionally, many traditional and customary practitioners either do not recognize permit requirements for their religious practices or lack the ability to obtain special use permits or conservation district use permits for land uses under HAR §13-5-2. *Id.* ¶11. UHH does not reasonably rely on an unreasonable regulation of Kānaka Maoli traditional and customary practices as evidence of its compliance with Condition No. 4.

B. DLNR's summary and unlawful approval of "initiated" construction prejudiced Mauna Kea Hui due process rights to enforcement of permit conditions.

Mauna Kea Hui's rights and interests in the enforcement and proper interpretation of Condition No. 4 as parties to the contested case that resulted in the 2017 Board Order. The Board's 2017 Order represented that permit conditions, including Condition No. 4 would render the TMT project compliant with applicable laws. 2017 Order (FOFs ¶¶131, 156, 441-43, 454, 490, 931; COLs ¶¶133-35, 247, 509). For instance, this Board concluded:

By following the applicable provisions of the various relevant plans, sub-plans, and permit conditions, UH Hilo and the TIO will conserve, protect, and preserve the important natural and cultural resources of the State, will promote the long-term sustainability of those resources, and will promote the health, safety, and welfare of the public.

COL ¶134. UHH's noncompliance with Condition No. 4 undermines the Board's conclusion as to the conservation, protection, and preservation of important natural and cultural resources, amongst other things. The purpose of time limits on conservation district use permits, including UHH's permit, is to allow the Board to revisit applicants' representations of its projects and any changed conditions or

unexpected circumstances. UHH's concession that it has not been able to construct the TMT requires the Board to re-examine the permit.

Changed conditions and unexpected circumstances exist in regard to UHH's permit. The fact of the many thousands of people seeking to express their opposition to further construction on Mauna Kea in 2019 was not before the Board when it issued its 2017 Order. Ching Decl. ¶12. During the 2021 legislative session, the House of Representatives assembled a working group to revisit the propriety of UHH's management of Mauna Kea under House Resolution No. 33. *Id.* ¶13.

Further, project proponents apparently lack at least \$1 billion in funding to construct the TMT and have sought to make up their shortfall through public funding, specifically from the National Science Foundation (NSF). Ching Decl. ¶¶5-6, 14, Exh. 05, 06. Even if NSF provides funding, the TMT would have to conduct federal permitting processes - such as National Environmental Policy Act environmental review and National Historic Preservation Act section 106 consultation - that could span several years. *Id.*

More recently, the Canadian Astronomical Association (CASCA) issued the following statement: "Unless the TMT project has consent from the Native Hawaiians, Canada's astronomical community cannot support its construction on Maunakea." Ching Decl. ¶¶8, Exh. 07. The present potential loss of support from the Canadian partner in the project pivots on TMT project proponents' failure to have sought and obtained consent. *Id.* ¶15. In December 2020, DLNR presented an "Independent Evaluation of the Implementation of the Mauna Kea Comprehensive Plan" that found the University's management entity had not implemented the plan in three areas, including consultation, education, and outreach to the community and Hawaiian cultural practitioners in particular. *Id.* ¶¶7, 16, Exh. 06.

The reasons UHH cannot comply with Condition No. 4 require full examination by the Board, at which time the Board should reconsider its initial grant of the permit in 2017. The DLNR chairperson's summary approval of UHH's request prejudiced the due process rights of the Mauna Kea Hui to raise these issues before the Board as part of this contested case, or alternatively through Board action on a second request for extension of time to comply. HAR §13-5-43(b) ("[t]ime extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant.").

C. No rule permits DLNR's approval of UHH's notice of initiation.

UHH's "notice of initiation" sought to short-cut processes for determining the constitution of "work and/or construction on the land", which would otherwise require filing of a petition for declaratory orders, and further to evade requirements that the Board review extensions beyond the first request. HAR

§13-5-43(b). As set forth *supra* Part II.A-B, DLNR lacked authority to issue a de facto revision of permit conditions by “approv[ing]” UHH’s notice of initiation. Under HRS §91-1, a “rule” is defined as:

each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda.

Id. DLNR’s revision of Condition No. 4 constitutes an “agency statement of general or particular applicability and future effect” that implemented the prescribed conditions that are enforceable at law and thus constitutes a “rule” under HRS § 91-1. Agencies are required to promulgate such rules through procedures set forth under HRS §91-3.

Rulemaking is “not a matter of agency discretion . . . every agency action is ‘a recognizable rule or an order’ under the [Florida Administrative Procedures Act] or is ‘incipiently a rule or order.’” *Fla. Stat. S. Baptist Hosp. of Fla. v. Agency for Health Care Admin.*, 270 So. 3d 488, 503 (Fla. App. 2019) quoting Florida Statutes § 120.54(1) & *Friends of Hatchineha, Inc. v. State, Dep’t of Env’tl. Regulation*, 580 So.2d 267, 271 (Fla. 1st DCA 1991). “[T]he purpose of rule-making is to govern the future conduct of groups and individuals[.]” *Pila’a 400, LLC v. Bd. of Land & Nat. Res.*, 132 Hawai’i 247, 264, 320 P.3d 912, 929 (2014).

Whether or not DLNR has a written description of the DLNR chairperson’s ability to issue condition revisions is of no consequence to whether the chair operated under an unlawful rule. *See Nuuanu Valley Ass’n v. City of Honolulu*, 119 Hawai’i 90, 99-100, 194 P.3d 531, 540-41 (2008) (city’s unwritten policy of refusing to disclose records under circumstances was a rule and not “internal management” because the policy “affects the procedures available to the public, and implements, interprets, or prescribes policy, or describes the procedure or practice requirements of” the city); *Hawai’i Prince Hotel Waikiki Corp. v. City & County of Honolulu*, 89 Hawai’i 381, 393, 974 P.2d 21, 33 (1999) (a city appraiser’s methodology was held “clearly a ‘rule’ within the meaning of HRS § 91-1(4)” because it was based on the appraiser’s interpretation of ordinances and would “undoubtedly affect[] the assessed value of” existing and future properties), *declined to overrule in Alford v. City & County of Honolulu*, 109 Hawai’i 14, 122 P.3d 809 (2005).

The Chair’s summary approval of UHH’s “notice of initiation” operated under an unlawful rule for failure to have been properly promulgated under HRS § 91-3 procedures. The Mauna Kea Hui pray this Board strike the Chair’s approval as having been exercised under unlawful rules. UHH’s de facto request

for revision of permit conditions should be brought before the Board as part of contested case proceedings or, at minimum, through a request for a second time extension to comply with permit conditions.

D. UHH failed to submit supportive documentation establishing it initiated work on the land or construction of the TMT.

Extensions of time to initiate UHH's project were require to be "based on supportive documentation from the applicant." HAR §13-5-43(b). Documents submitted by UHH consisted in a three page letter that rather established UHH previously conceded its actions did not constitute initiation of work on the land or TMT construction and constituted unpermitted removal of structures in the conservation district. Exh. 03. UHH's submissions are deficient to meet requirements of the rule and the DLNR chairperson clearly exceeded her authority in approving UHH's request. *Id.* at 3.

IV. Alternative relief in the form of declaratory orders requested

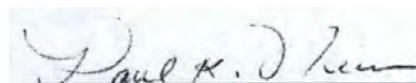
Should the Board seek an alternative ground for granting requested relief, Mauna Kea Hui seeks declaratory orders stating UHH has not initiated construction so as to comply with Condition No. 4. The Board is empowered to grant declaratory orders. HRS §91-8.

The Mauna Kea Hui is represented by co-counsel, whose names, addresses, and telephone numbers are provided above. HAR § 13-1-27(b)(1). Petitioners are parties with legal rights and interests described *supra* Part I, and are submitting this petition to enforce Condition No. 4 of the permit. *Id.*(b)(2).

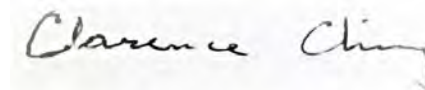
In question are the DLNR chairperson's approval of UHH's April 28, 2021 request for confirmation of its notice of initiation and the application of HAR §13-5-43(b) (time extensions) and HAR §13-5-42(a)(8) (standard conditions), as set forth *supra* Part III; and that the DLNR chair's approval of UHH's request for permit condition revisions constituted a "rule" that is required to be promulgated under procedures set forth by HRS §91-3, as set forth *supra* Part IV. HAR § 13-1-27(b)(3). Parts III and IV *supra* in this memorandum of authorities also set forth Petitioner's positions on the correct interpretation and application of these rules and authorities to the facts before the Board. HAR § 13-1-27(b)(4), (5). Finally, each petitioner's signature is affixed below:



KEALOHA PISCIOтта, President
MAUNA KEA ANAINA HOU, Petitioner



PAUL NEVES, Petitioner



CLARENCE KŪKAUAKAHI CHING, Petitioner

S. Muneoka

SHELLEY MUNEOKA, Treasurer,
KAHEA: THE HAWAIIAN-ENVIRONMENTAL
ALLIANCE, Petitioner

Deborah J. Ward

DEBORAH J. WARD, Petitioner

V. Conclusion

For the foregoing reasons, the Mauna Kea Hui requests this Board reopen its contested case hearings for the limited purpose of hearing and deciding this motion to confirm UHH's noncompliance with Condition No. 4, or in the alternative, entering declaratory orders confirming the same.

DATED: Honolulu, Hawai'i

May 24, 2021

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

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 CLARENCE
 Use Permit (CDUP) HA-3568 for the Thirty Meter) KUKAUAKAHI CHING
 Telescope at the Mauna Kea Science Reserve, Kahohe)
 Mauka, Hamakua District, Island of Hawai‘i, TMK)
 (3) 4-4-015:009)
 _____)

DECLARATION OF CLARENCE KUKAUAKAHI CHING

I, CLARENCE KUKAUAKAHI CHING, declare under penalty of law that the following is true and correct.

1. I am a member of the Mauna Kea Hui, which includes MAUNA KEA ANAINA HOU, KEALOHA PISCIOTTA; CLARENCE KUKAUAKAHI CHING; DEBORAH J. WARD; PAUL K. NEVES; and KAHEA: THE HAWAIIAN-ENVIRONMENTAL ALLIANCE in the above entitled proceedings.

2. Attached as Exhibit “01” is a true and correct copy of the letter from Bonnie Irwin, Chancellor of the University of Hawai‘i at Hilo, to Suzanne Case, Chair of the Board of Land and Natural Resources, dated July 30, 2019, requesting a two year extension of time to comply with Standard Condition No. 4 of the permit, which was obtained from the DLNR Office of Conservation and Coastal Lands (OCCL) online file repository *available at*: https://dlnr.hawaii.gov/occl/files/2019/08/Extension-HA-20-04.pdf?fbclid=IwAR2JXP_ht-juyKcvJLXHMHYGEe2o07r-7Uy_My7INelh_FgHu3BXP41LFiE

3. Attached as Exhibit “02” is a true and correct copy of the letter from Suzanne Case, Chair of the Board of Land and Natural Resources, to Bonnie Irwin, Chancellor of the University of Hawai‘i at Hilo (UHH), dated July 30, 2019, granting the latter’s two year extension of time to comply with Standard Condition No. 4 of the permit, which letter was also obtained from the OCCL online file repository.

4. Attached as Exhibit “03” is a true and correct copy of the letter UHH wrote to the OCCL Administrator to notify him of “initiation of work and/ or construction” for the TMT in compliance with General Condition No. 4, dated April 28, 2021, obtained from the OCCL online file repository *available at*: https://dlnr.hawaii.gov/occl/files/2021/05/3568-TMT-Notice-of-start-of-construction-May-2021.pdf?fbclid=IwAR1pWFJLjbLkguhUfVGmRh_oF98HLMq_OX5bgOTsQSaAuhwb47TBICRnHxg.

5. Attached as Exhibit “04” is a true and correct copy of the National Science Foundation’s

Statement on U.S. Extremely Large Telescope program proposals, published on August 13, 2020 *available at*: https://www.nsf.gov/news/news_summ.jsp?cntn_id=301034

6. Attached as Exhibit “05” is a true and correct copy of the Associated Press news article titled, “Science foundation discusses funding giant Hawaii telescope,” published on August 21, 2020 *available at*: <https://apnews.com/article/technology-hi-state-wire-business-travel-us-news-dafc755bda17dcb5d78f2f7f14b7894c>

7. Attached as Exhibit “06” is a true and correct copy of the December 2020, DLNR “Independent Evaluation of the Implementation of the Mauna Kea Comprehensive Plan” *available at*: <https://dlnr.hawaii.gov/occl/files/2020/12/Kuiwalu-Report.pdf>.

8. Attached as Exhibit “07” is a true and correct copy of “Commending CASCA’s Decision Not to Support TMT Without Native Hawaiian Consent,” (accessed May 19, 2021) *available at*: <https://kanaeokana.net/noconsent>.

9. Construction of ahu, including and especially those that are unpermitted, are evidence of ongoing and vibrant traditional and cultural practices that have not been adequately addressed or protected under the current permit.

10. The thriving of Hawaiian cultural practice has given rise to expanded awareness and activity on Mauna Kea that includes constructing ahu and protection of these lands as part of a sacred trust.

11. Additionally, many traditional and customary practitioners either do not recognize permit requirements for their religious practices or lack the ability to obtain special use permits or conservation district use permits for land uses under HAR §13-5-2.

12. The fact that many thousands of people seeking to express their opposition to further construction on Mauna Kea in 2019 was not before the Board when it issued its 2017 Order.

13. During the 2021 legislative session, the Hawai‘i state House of Representatives assembled a working group to revisit the propriety of UHH’s management of Mauna Kea under House Resolution No. 33.

14. Project proponents apparently lack \$1 billion in funding to construct the TMT and have sought to make up their shortfall through public funding, specifically from the National Science Foundation (NSF). Even if the NSF provides such funding, the TMT would have to conduct federal permitting processes - such as National Environmental Policy Act environmental review and National Historic Preservation Act section 106 consultation - that could span several years.

15. More recently, the Canadian Astronomical Association (CASCA) issued the following

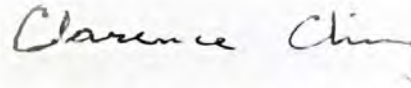
statement: “Unless the TMT project has consent from the Native Hawaiians, Canada’s astronomical community cannot support its construction on Maunakea.” There is now the potential loss of support from the Canadian partner in the project that pivots on TMT project proponents’ failure to have sought and obtained consent.

16. In December 2020, DLNR presented an “Independent Evaluation of the Implementation of the Mauna Kea Comprehensive Plan” that found the University’s management entity had not implemented the plan in three areas, including consultation, education, and outreach to the community and Hawaiian cultural practitioners in particular.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Kamuela, Hawai‘i

May 21, 2021

A handwritten signature in cursive script that reads "Clarence Ching". The signature is written in black ink on a light-colored background.

CLARENCE KUKAUAKAHI CHING
DECLARANT

University of Hawai'i at Hilo Administration
Office of the Chancellor



UNIVERSITY
of HAWAII
HILO

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 9:44
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."

Exhibit A
Mauna Kea Hui's Motion

EXHIBIT "01"

200 W. Kāwili St.
Hilo, Hawai'i 96720-4091
Telephone: (808) 932-7348
Fax: (808) 932-7338
hilo.hawaii.edu

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Ms. Suzanne Case
 July 30, 2019
 Page 2

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, 2021.¹ 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.²

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

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

² 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

Ms. Suzanne Case
July 30, 2019
Page 3

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

Ms. Suzanne Case
July 30, 2019
Page 4

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

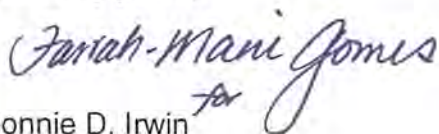
Ms. Suzanne Case
July 30, 2019
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appellate process that took over a year to conclude and the current demonstrations preventing access to the site, have all substantially delayed TIO's efforts to move its heavy equipment to the site and continue substantial 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 cursive script that reads "Farah-Mani Gomes".

Bonnie D. Irwin ^{for}
Chancellor

c: Office of Maunakea Management
TMT International Observatory LLC

ATTACHMENT 1

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'ohc Mauka, Hamakua, Hawai'i;
 TMK (3) 4-4-015:009**

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

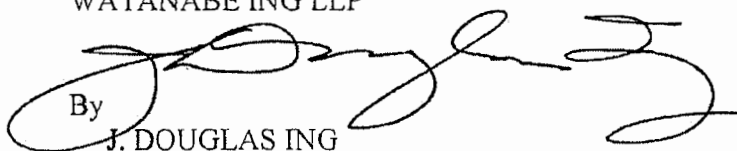
circumstances beyond TIO's control (including a lengthy appellate process and the current situation involving protestors blocking access to the site), TIO's heavy equipment access to the site has been substantially delayed.

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;

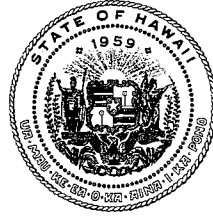
WATANABE ING LLP

By  J. DOUGLAS ING

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

731693

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.

Exhibit A
Mauna Kea Hui's Motion

EXHIBIT "02"

- 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
HILO

2021 MAY -3 P 12:19

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

April 28, 2021

Mr. Samuel Lemmo
Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
1151 Punchbowl Street, Room 131
Honolulu, Hawai'i 96813
sam.j.lemmo@hawaii.gov

Subject: Notice of Initiation of Work and/or Construction for the Thirty Meter Telescope Project, CDUP-HA-3568, General Condition No. 4

Dear Mr. Lemmo:

Pursuant to and in compliance with General Condition No. 4 of Conservation District Use Permit ("CDUP") HA-3568, the University of Hawai'i at Hilo ("UH Hilo") hereby notifies the Department of Land and Natural Resources ("DLNR") that (1) work done, and/or (2) construction done on the land (collectively "Project Activity") for the Thirty Meter Telescope Project ("TMT Project") was initiated within two (2) years of the Board of Land and Natural Resources' ("BLNR") approval of CDUP HA-3568. As detailed below, Project Activity was initiated by no later than July 16, 2019.

General Condition No. 4 of CDUP HA-3568 provides:

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.

BLNR approved CDUP HA-3568 on September 28, 2017. On June 19, 2019, DLNR issued the Notice to Proceed for the TMT Project, stating that "[b]ased on review of the information

Exhibit A
Mauna Kea Hui's Motion

EXHIBIT "03"

200 W. Kāwili St.
Hilo, Hawai'i 96720-4091
Telephone: (808) 932-7348
Fax: (808) 932-7338
hilo.hawaii.edu

An Equal Opportunity/Affirmative Action Institution

[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.”

Subsequent to the issuance of the Notice to Proceed, and before the September 28, 2019 initiation deadline, the following Project Activity was initiated at the TMT Project site or in preparation for Project Activity to be performed at the TMT Project site:

- **June 20, 2019**—Unpermitted ahu removed.
- **June 25, 2019**—Goodfellow Bros, Inc. (“GBI”), the civil contractor for the TMT Project, and M3 Construction Management (“M3”), the construction manager for the TMT Project, 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 on the telescope operations. This was done to confirm on the ground boundaries of the access road and project site;
- **July 8, 2019**—Kick-Off Meeting between TMT International Observatory, LLC (“TIO”), GBI, M3, subcontractors, and others to discuss construction procedures, safety protocols, other requirements, and special concerns;
- **July 12, 2019**—GBI, M3, and SMA representatives located and surveyed the underground fiber optic and electrical lines in preparation of mobilizing the heavy equipment to the TMT project site to mitigate the risk of damaging the SMA fiber optics;
- **July 15, 2019**—The Big Island Invasive Species Committee (“BIISC”) inspected TIO construction equipment and vehicles. BIISC provides invasive species compliance certificates; and
- **July 16, 2019**—TIO attempted to access the TMT Project site. TIO mobilized 18 vehicles and equipment, including a 980 Loader, D6 Dozer, WA320 Loader, and Mini-Ex/Roller. Persons objecting to the TMT Project blocked TIO’s access to the TMT Project site for several months.

The above Project Activity was performed in accordance with DLNR approved construction plans.

Based on the above, UH Hilo reasonably believes and hereby notifies DLNR that Project Activity was initiated by no later than July 16, 2019.¹ Your acknowledgment and concurrence of

¹ By way of correspondence to Chairperson Suzanne Case, dated July 30, 2019, UH Hilo requested an extension of time as to General Condition No. 4. In making the request, UH Hilo stated that “based on information provided by [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

the TMT Project's initiation of Project Activity are respectfully requested. Should you have any questions or require additional information, please contact me at 808-932-7348 or by email at bdirwin@hawaii.edu.



Bonnie D. Irwin, Chancellor
University of Hawai'i at Hilo

cc: Fengchuan Liu, Project Manager (acting), TMT, fliu@tmt.org

APPROVED

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands**

BY: by Leo Lee

DATE: 5/4/2021

REFERENCE NO. _____

that the two year deadline prescribed by General Condition No. 4 has been met." Id. at 2. UH Hilo's extension request was made "[w]ithout waiving the foregoing." Id.

TIO also clearly stated in its July 29, 2019 correspondence to UH Hilo, which was attached as an exhibit to UH Hilo's July 30, 2019 correspondence, that "TIO does not waive, and expressly preserves, its position that work has been initiated in compliance with the deadline in General Condition No. 4." Id.



NSF statement on U.S. Extremely Large Telescope program proposals

August 13, 2020

Due to Privacy Act restrictions, NSF typically cannot identify the organizations or associated details of funding proposals it receives. However, three organizations publicly disclosed their submission of proposals to NSF for planning and design of a U.S. Extremely Large Telescope program. NSF can, therefore, confirm receipt of proposals from the organizations developing the Giant Magellan Telescope (GMT), the Thirty Meter Telescope (TMT), and NSF's NOIRLab (a federally funded research and development center).

NSF understands that potential construction of TMT on Maunakea is a sensitive issue and plans to engage in early and informal outreach efforts with stakeholders, including Native Hawaiians, to listen to and seek an understanding of their viewpoints. If NSF ultimately initiates a formal federal environmental review process, this advance outreach would serve as a precursor to it.

NSF's receipt of a proposal and its initiation of an informal outreach effort are not reflective of NSF's position regarding any project. To request a discussion with NSF related to Maunakea and potential NSF involvement in the TMT project, please contact us by e-mail at: AST-MK@nsf.gov (<mailto:AST-MK@nsf.gov>).

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Science foundation discusses funding giant Hawaii telescope

August 21, 2020



Exhibit A
Mauna Kea Hui's Motion

HONOLULU (AP) — The National Science Foundation has launched an informal outreach to Hawaii about possible funding efforts for the stalled Thirty Meter Telescope project.

The effort by the nation's top funder of basic research could lead to a huge influx of cash for the astronomy

EXHIBIT "05"

Science foundation discusses funding giant ...

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Thursday.

Funding efforts could also trigger a regulatory process adding two years or more to a construction timeline that is far behind schedule. The project recently announced the start of construction was delayed until spring.

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The foundation said in a statement it plans to reach out to “stakeholders, including Native Hawaiians,” to understand their viewpoints.

Protesters blocked the 6.27-mile (10-kilometer) access road to the summit of Mauna Kea, Hawaii’s tallest mountain, in a demonstration against the project from July through December 2019. Telescope opponents said the project would desecrate land considered sacred by some Native Hawaiians.

The foundation said its outreach would serve as a precursor to a formal federal environmental review process.

The Thirty Meter Telescope project has teamed with the Giant Magellan Telescope planned in Chile and the U.S. National Optical-Infrared Astronomy Research Laboratory to propose the U.S. Extremely Large Telescope Program.

The partnership, which is partly an effort to obtain additional funding, proposes to offer U.S. astronomers complete viewing coverage of the skies in the Northern and Southern hemispheres.

Thirty Meter Telescope officials recently submitted a planning and design proposal to the science foundation aimed at obtaining major funding for \$1 billion added to the project’s cost due to construction delays, inflation and other factors.

Under the proposal, the foundation would contribute \$850 million each to the Thirty Meter Telescope and the Giant Magellan Telescope.

Funding approval would trigger the creation of a federal environmental impact statement and National Historic Preservation Act Section 106 consultation, a process of two years or more.

“It will lead to very significant outreach, another opportunity to listen and learn and a renewed

Science foundation discusses funding giant ...

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Santa Cruz astronomy professor and Thirty Meter Telescope board member, said last month.

Kealoha Pisciotta, leader of the Mauna Kea Hui group that opposes the telescope, said her group and others are prepared to challenge federal environmental documents.

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**INDEPENDENT EVALUATION OF THE
IMPLEMENTATION OF THE MAUNA KEA
COMPREHENSIVE MANAGEMENT PLAN**

**Prepared for
Department of Land and Natural Resources**

**By
Ku'iwalu**

December 2020

Exhibit A
Mauna Kea Hui's Motion

EXHIBIT "06"

EXECUTIVE SUMMARY

It has been over ten (10) years since the approval of the Mauna Kea Comprehensive Management Plan (CMP),¹ and the emotions related to Mauna Kea have not diminished but, to the contrary, have intensified and polarized the community. We recognize that the current issues related to Mauna Kea, in particular the construction of the Thirty Meter Telescope (TMT), is a contentious issue. To be very clear, this Report is not for or about TMT. The purpose of this Report is to provide the Department of Land and Natural Resources (DLNR) an independent evaluation of the University of Hawai'i (UH), specifically the Office of Mauna Kea Management's (OMKM), implementation of the CMP management actions contained in Section 7 of the CMP and the public input on how effective UH is managing Mauna Kea. This Report is intended to be a resource to DLNR and the Board of Land and Natural Resources (BLNR) as it reviews UH's current and potential future management of the state conservation lands at Mauna Kea.

Gathering and incorporating public input into the evaluation process was a critical component of this Report. Due to the COVID-19 restrictions, we were challenged with providing an appropriate venue for the public and stakeholders to, (1) get current and accurate information about the management actions (MA) UH is required to implement under the CMP, and (2) provide a transparent and fair opportunity for public input into the UH's implementation of the CMP. We assembled a comprehensive range of tools to provide information and to solicit public input, from email updates, virtual public meetings, dedicated website, and a Facebook page, to small virtual talk story sessions. Throughout the evaluation process, we engaged almost 500 individuals and organizations. We recognize that we may not have heard from everyone, but we believe the range and interests of the participants is reflective of the general public and stakeholders in Mauna Kea.

The Report consists of three assessments. First, OMKM's self-assessment of their implementation of the CMP. Second, the public's assessment, based upon the comments we received. And third, the independent evaluation utilizing the logic model approach that took into consideration UH's self-assessment, the public input, the timeliness of OMKM's implementation of MAs, and whether UH's implementation of the 103 MAs achieved the desired outcomes as set forth in the CMP.

With respect to UH's self-assessment, the *OMKM 2020 Annual Report to the Board of Land and Natural Resources, Status of the Implementation of the Mauna Kea Comprehensive Management Plan* (OMKM 2020 Annual Report to BLNR) essentially concludes that "most management actions have either been

¹ *Mauna Kea Comprehensive Management Plan for the UH Management Areas*, April 2009 (hereinafter CMP), Executive Summary, page v.

implemented or are in progress.” For the most part, the UH Management Entities² believe they have made considerable progress in effectively implementing the CMP MAs and are, in fact, better managing and protecting the cultural and natural resources. However, there is a difference of opinion between UH-Hilo Management Entities (UH-Hilo Entities)³ and the larger UH System with respect to the public’s perception of how effective OMKM is in managing the state conservation lands at Mauna Kea. Accordingly, “in response to past criticisms”⁴ the UH Board of Regents (BOR) adopted Resolution 19-03 to take timely action to comply with the management plans, including cultural education and community outreach, decommissioning, and reorganization and restructuring the UH governance structure in their management of Mauna Kea.

The public’s assessment of how effectively UH has implemented the CMP has primarily varied depending on whether they are in favor or opposition of telescope development on Mauna Kea. Those who support existing and future telescope development on Mauna Kea believe that OMKM has adequately implemented the CMP MAs to preserve and protect the cultural and natural resources on Mauna Kea. For those who do not support continued telescope development on Mauna Kea beyond 2033, the expiration of the existing state lease, they believe that UH continues to mismanage Mauna Kea as concluded in the 1998 State Auditor’s Report. In particular, those in opposition believe that UH continues to advocate telescope development over the protection and preservation of the resources.

Finally, the independent evaluation found that OMKM has made progress in implementing most of the CMP MAs, and in many regards OMKM is effectively managing the activities and uses on Mauna Kea to better protect the natural and cultural resources. We heard many comments that the cultural and natural resources on the state conservation lands on Mauna Kea are some of the best managed and protected lands in the entire State. The area is clear of trash, the invasive species are being removed not only by OMKM but volunteer groups, and the OMKM Rangers to ensure public safety on Mauna Kea.

² “UH Management Entities” include the UH Board of Regents (BOR), UH President, Institute for Astronomy (IfA), Executive Director of Maunakea Stewardship, UH Hilo Chancellor, Mauna Kea Management Board (MKMB), OMKM, Kahu Ku Mauna (KKM) and OMKM Rangers.

³ UH-Hilo Management Entities (UH-Hilo Entities) include UH-Hilo Chancellor, MKMB, OMKM, KKM, and OMKM Rangers.

⁴ UH BOR Resolution 19-03, Adopted November 6, 2019, Amended, July 1, 2020 (BOR Resolution 19-03).

However, the independent evaluation also found that OMKM has not effectively implemented the CMP in three major areas. First, the adoption of the administrative rules was untimely. In 2009, the same year that the CMP was approved, UH obtained legislative authorization to adopt administrative rules to manage the activities on Mauna Kea to ensure the protection of the resources. However, the rules did not become effective until 2020. UH's failure to timely adopt administrative rules has limited their ability to manage public access and regulate commercial activities, essentially hampering their ability to protect the resources and public health and safety on Mauna Kea.

Second, members of the Native Hawaiian community, both those who oppose and support UH's management of Mauna Kea, were not consulted on matters related to cultural and resources issues. The CMP specifically identifies the Native Hawaiian stakeholders to include families with cultural and lineal connections to Mauna Kea, Kūpuna, cultural practitioners, the Office of Hawaiian Affairs and other Native Hawaiian groups. Representatives from these stakeholder groups have consistently commented that they were not consulted by OMKM on cultural issues, including removal of family shrines, stacking of Pōhaku, and identification of cultural sites.

Third, OMKM did not effectively engage with the community, in particular, members of the Native Hawaiian community, on education and outreach efforts, including decision-making process related to the management of Mauna Kea. Many Native Hawaiians on Hawaii Island feel disengaged and disrespected by OMKM. In particular, there is an absence of genuine consultation with the Native Hawaiian community that has resulted in greater mistrust of UH. Even with the Native Hawaiian constituency who strongly support OMKM and telescope development, OMKM has not taken the opportunity to involve them in their community outreach efforts.

Unfortunately, these inadequacies by OMKM have overshadowed their progress in the otherwise effective implementation of many of the CMP MAs.

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ACRONYMS

ACT	Activities and Uses (Comprehensive Management Plan Management Action)
AR	Astronomical Resources (CMP MA)
BLNR	Board of Land and Natural Resources
BOR	Board of Regents
C	Construction Guidelines (CMP MA)
CDUA	Conservation District Use Application
CDUP	Conservation District Use Permit
CIA	Cultural Impact Assessment
CMP	Mauna Kea Comprehensive Management Plan
CR	Cultural Resources (CMP MA)
DHHL	Department of Hawaiian Home Lands, State of Hawai'i
DLNR	Department of Land and Natural Resources, State of Hawai'i
DOCARE	Division of Conservation and Resource Enforcement, DLNR
DOFAW	Division of Forestry and Wildlife, DLNR
EA	Environmental Assessment
EIS	Environmental Impact Statement
EO	Education and Outreach (CMP MA)
FLU	Future Land Use (CMP MA)
HAR	Hawai'i Administrative Rules
HRS	Hawai'i Revised Statutes
IfA	Institute for Astronomy, UH
IM	Infrastructure and Maintenance (CMP MA)
KKM	Kahu Ku Mauna
MA	Management Action
MCP	Management Component Plan
MEU	Monitoring, Evaluation and Updates (CMP MA)
MKMB	Mauna Kea Management Board
MKSS	Mauna Kea Observatories Support Services
NAR	Natural Area Reserve, DLNR
NHO	Native Hawaiian Organization
NR	Natural Resources (CMP MA)
NRHP	National Register of Historic Places
NSF	National Science Foundation
OCCL	Office of Conservation and Coastal Lands, DLNR
OEQC	Office of Environmental Quality Control
OHA	Office of Hawaiian Affairs
OI	Operations and Implementation (CMP MA)
OMKM	Office of Mauna Kea Management, UH
OMMP	Operations, Monitoring, and Maintenance Plan
P	Permitting and Enforcement (CMP MA)
SHPD	State Historic Preservation Division, DLNR
SR	Site Recycling, Decommissioning, Demolition and Restoration (CMP MA)
TCP	Traditional Cultural Property
TMT	Thirty Meter Telescope
UH	University of Hawai'i
UH-Hilo	University of Hawai'i at Hilo

INTRODUCTION

In 1968, BLNR issued a 65-year General Lease No. S-4191 to UH for approximately 11,288 acres of state conservation lands. Of the 11,288 acres, approximately 525 acres is designated as the Astronomy Precinct and the remaining 10,763 acres is designated as Natural and Cultural Preservation Area.⁵ The state lease will expire in 2033. UH has indicated that it intends to seek a new lease with BLNR for the 11,288 acres currently under General Lease No. S-4191 and 19 acres known at Hale Pōhaku under General Lease No. S-5529.⁶

Over ten years ago in 2009, Ku'iwalu Consulting and its Project Team,⁷ developed the CMP for the UH Management Areas.⁸ The CMP MA related to Monitoring, Evaluation, and Updates MEU-1,⁹ requires UH, through OMKM, to produce annual progress reports describing in detail the management goals, objectives, and actions for the year and what progress was made towards meeting them. In August 2020 we received from UH, the OMKM 2020 Annual Report to BLNR. In addition to annual progress reports, MEU-1 requires OMKM to prepare Five-Year Outcome Analysis Reports that describes the status of the various management programs, progress towards meeting CMP goals, and other relevant information. OMKM is in the process of completing its first five-year review.

Since OMKM will be submitting its first Five-Year Progress Report and UH has announced its intent to file an EIS for a new state lease, DLNR sought an independent evaluation of UH's current management of Mauna Kea under the CMP. More specifically, DLNR sought an independent evaluation of not only UH's implementation of the CMP but also UH's adherence to the CMP and the effectiveness of its management strategies and governance structures in preserving and protecting the valuable cultural and natural resources on the state conservation lands.

⁵ The Astronomy Precinct and Natural and Cultural Preservation Area were designated by UH in its 2000 Mauna Kea Science Reserve Master Plan (Master Plan). The Master Plan called for 525 acres of the summit area leased land to be designated an Astronomy Precinct where the astronomy development was to be consolidated to maintain a close grouping of astronomy facilities, roads, and support infrastructure. CMP page 3-1. The Master Plan was approved by the UH BOR but not adopted or approved by BLNR. CMP page 3-8.

⁶ UH's notice of intent to file an environmental impact statement (EIS) for the state leased lands was published in the Office of Environmental Quality Control (OEQC) February 23, 2018 Environmental Bulletin.

⁷ The Project Team that developed the CMP consisted of The Edith Kanaka'ole Foundation, Rechtman Consulting, McNeil Wilson, Sustainable Resources Group International, Inc., and Pacific Consulting Services.

⁸ The UH Management Areas is described in Section 3.1.1 of the CMP as beginning "at approximately 9,200 ft. (2,804 m) on Mauna Kea and extends to the summit, at 13,796 ft. (4,205 m), encompassing three distinct areas: the Mauna Kea Science Reserve (Science Reserve), the mid-level facilities at Hale Pōhaku, and the Summit Access Road (see Figure 3-1). These areas are collectively referred to as the 'UH Management Areas.' The UH Management Areas on Mauna Kea are classified in the resource subzone of the state conservation district lands (see Section 3.4.2)." See CMP at page 3-16.

⁹ MEU-1 refers to Monitoring, Evaluation and Updates (MEU). See CMP at page 7-64.

DLNR'S INDEPENDENT EVALUATION OF UH'S IMPLEMENTATION OF THE CMP

PURPOSE OF THE INDEPENDENT EVALUATION REPORT

The purpose of *this* Independent Evaluation Report (Report) is to (1) evaluate the effectiveness of UH, specifically OMKM's,¹⁰ implementation of the specific Management Component Plans (MCP) found in Section 7 of the CMP, and (2) to evaluate the efficiency of the governance structure in managing the cultural and natural resources within state conservation lands under lease to UH. Ultimately, this Report will provide DLNR and BLNR the relevant information, including extensive public input, as they consider the management of the state conservation lands during the current lease term and beyond, in any future lease.

INDEPENDENT EVALUATION PROCESS

Fact Gathering

The independent evaluation process focused on OMKM's implementation of the CMP MAs within the MCPs and UH's governance structure in managing Mauna Kea and the Mauna Kea Science Reserve. The Project Team¹¹ gathered relevant information from files of DLNR, UH, various litigation involving Mauna Kea, 1998 state auditor report and follow-up audit reports, relevant print and social media, and other related materials. We also provided UH the opportunity to submit all relevant documents on their implementation of the CMP. In response to the request, UH emailed a comprehensive list of documents and links supporting their implementation of the CMP.¹² All information that was provided to Ku'iwalu was uploaded to the CMP evaluation website, www.evaluatetheCMP.com.

We also reviewed materials related to the implementation of the CMP and Mauna Kea in general, from other stakeholders, including but not limited to the Sierra Club of Hawai'i, Protect Mauna Kea, KAHEA, IfA, 'Imiloa Astronomy Center, Hawai'i Unity & Liberation Institute, Hawai'i Forest & Trails, EnVision Maunakea, Office of Hawaiian Affairs (OHA), Imua TMT, and the TMT International Observatory.

¹⁰ Section 7.4.1 of the CMP states that the OMKM will be responsible for implementing the CMP and ensuring adherence to its provisions. However, for purposes of this Report, since the state lease is issued to UH, the UH will be generally referenced as responsible for the implementation of the CMP unless the action is specifically undertaken by OMKM, then OMKM will be referenced.

¹¹ The Project Team for this Report includes SMS Research, People Strategies Hawai'i LLC, and Ku'iwalu.

¹² Ku'iwalu sent a letter dated May 19, 2020 to Dr. Gregory Chun, UH's Executive Director of Maunakea Stewardship, providing them an "opportunity to furnish Ku'iwalu with all relevant information, which could include reports, studies, annual reports, meeting notes, community comments, administrative rule-making, response to auditor's reports, etc. that document UH's performance, operations, and the management of Mauna Kea consistent with the CMP." Dr. Chun was identified as UH's Point of Contact for the independent evaluation.

Public Engagement Process

As part of the evaluation process, Ku'iwalu proposed to develop and implement a culturally sensitive and robust public engagement process, similar to the community outreach process utilized in the preparation of the CMP that was approved in 2009. At the onset, Ku'iwalu was challenged by the constraints and uncertainties of the COVID-19 restrictions on social distancing and travel to Hawai'i Island. Thus, Ku'iwalu utilized a variety of non-traditional approaches to engage the general public and stakeholders to solicit their input on UH's implementation of the CMP and stewardship of Mauna Kea. The following methods were used to solicit public input: email updates, stakeholder meetings, virtual public meetings, website, Facebook, and direct contact with Ku'iwalu.

Development and Implementation of the Evaluation Model

SMS Research, based upon their experience and expertise, developed and conducted the independent evaluation. To start, they did a thorough review of the CMP and examined all the documents provided during the fact gathering phase. They relied upon the documents provided by UH, including OMKM's 2020 Annual Report to BLNR,¹³ MKMB meeting minutes, reports, studies, and other relevant documents. They also reviewed and considered all documents related to the CMP provided by other organizations, comments from stakeholder and virtual public meetings, website comments, and comments that were submitted directly to Ku'iwalu through phone calls and emails.

SMS Research then developed an evaluation model based upon the Logic Model Approach. This approach focuses on which MAs were completed by OMKM and the impact of those activities or actions on achieving the desired outcomes as set forth in each of the MCPs. The time period examined was UH's implementation of the CMP from 2010 to present.

Final Report

The Report includes three sets of evaluations. First, the Report includes UH's self-assessment based upon the OMKM 2020 Annual Report to BLNR. Second, the Report includes the public's assessment of how effectively UH implemented the CMP MAs, based upon comments from stakeholder meetings, the three virtual public meetings, comments submitted on the website or by email directly to Ku'iwalu. Third, the Report includes the independent evaluation based upon the logic model that took into consideration UH's self-assessment, public input, whether UH's action achieved the desired outcomes, and the timeliness of completion by UH to meet the desired outcomes.

The Report will be submitted to DLNR by December 31, 2020 and uploaded to the CMP website for public consumption.

Exhibit A ¹³ Appendix A7 is a copy of the OMKM 2020 Annual Report to BLNR.
Mauna Kea Hui's Motion

MANAGEMENT OF MAUNA KEA

Before delving into the public comment and evaluation model, we believe it is important to have an understanding of the historical background on management of Mauna Kea to provide context for the CMP MAs, MCP desired outcomes, and goals which set the framework for the Logic Model Approach.¹⁴ A brief history timeline of the management of Mauna Kea is shown in Figure 1.

MANAGEMENT OF MAUNA KEA PRIOR TO 1968

In the early 1960's, the federal government, through the National Aeronautics and Space Administration, was increasing funds to test, develop, design, and construct telescope facilities around the country. Due to accessibility, initial testing was conducted at Haleakalā, on Maui Island. In 1963, Governor John Burns provided funds to build an access trail to the summit of Mauna Kea for observatory testing. In 1964, after testing, UH concluded that Mauna Kea was an exceptional site for an astronomical observatory. In that same year, the State Land Use Commission placed the lands on Mauna Kea within the state's conservation district under the management jurisdiction of BLNR.¹⁵

MANAGEMENT OF MAUNA KEA UNDER GENERAL LEASE NO. S-4191

In 1967, UH established the IfA to plan for telescope development on Mauna Kea. The following year, UH applied to BLNR for a 65-year lease of the state conservation lands at Mauna Kea to establish the Mauna Kea Science Reserve. Management of the state leased lands was primarily by IfA to further their mission to conduct and promote world-class astronomical research. From 1968 to 2002, thirteen telescopes were built on the summit of Mauna Kea.

¹⁴ We also recognize that this Report will be broadly reviewed, thus this background information on management of Mauna Kea will provide the relevant context when reviewing the Report.

¹⁵ See CMP Section 3.2, at pages 3-5 for complete History of Planning and Management of Mauna Kea. Additionally, Hawaii Revised Statutes (HRS), Chapter 205-2 describes the state four land use districts; urban, rural, agricultural, and conservation. Conservation districts include areas necessary for protection and preservation of resources.

During this same period of time, local groups, including hunters, cultural practitioners, conservationists, and others raised concerns about the increased development of telescopes on the summit of Mauna Kea with no management or care for the cultural and natural resources.¹⁶ From 1974 to 2000, DLNR and UH attempted to respond to the community concerns to improve management control over not only telescope development, but the proliferation of unregulated commercial and recreational use of Mauna Kea. DLNR adopted the 1977 DLNR Mauna Kea Plan, 1980 Hale Pōhaku Complex Development Plan, 1985 Mauna Kea Management Plan, and 1995 Revised Management Plan for the UH Management Areas on Mauna Kea. Similarly, in 1982 the UH BOR approved the Research and Development Plan for Mauna Kea Science Reserve, in 1983 the Mauna Kea Science Reserve Complex Development Plan, and in 2000 the Mauna Kea Science Reserve Master Plan.

¹⁶ State Auditor's Report *"Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve,"* Report No. 98-6, February 1998, page 45.

Figure 1: Brief History Timeline of Management of Mauna Kea



THE STATE AUDIT OF THE MANAGEMENT OF MAUNA KEA

In response to the “growing concerns” over the protection of Mauna Kea’s cultural and natural resources, the 1997 Hawai’i State Legislature, through Senate Concurrent Resolution No. 109, requested the State Auditor to conduct an audit of the management of Mauna Kea and the Mauna Kea Science Reserve. The audit was completed in February 1998, and specifically noted that the “conditions of the lease, the plan(s) developed, and the Conservation District Use Application (CDUA) process were all designed to allow the university’s use of the lands without causing excessive damage to the fragile environment. However, the university’s focus on pursuing its own interests has led to conditions and practices that have countered or weakened these processes.”¹⁷

The audit indicated that UH primarily focused on development of the summit of Mauna Kea for some of the most powerful astronomical instruments in the world. While these telescopes enhanced the university’s prestige and status around the astronomical community, “both the university and the department¹⁸ failed to develop and implement adequate controls to balance the environmental concerns with astronomy development.”¹⁹

The audit concluded that,

*Over thirty years have passed since construction of the first telescope on Mauna Kea. During this period, little was done to protect its natural resources. The university, as the leaseholder, should have provided sufficient protection to the natural resources and controlled public access and use. These requirements have not been adequately met. The Department of Land and Natural Resources, in its role as landlord, should have overseen the university’s activities and enforced permit conditions and regulations in protecting the State’s interests. Neither state agency has been proactive in maintaining the conservation district.*²⁰

The audit made several recommendations for UH and DLNR to improve the management of Mauna Kea and the Mauna Kea Science Reserve. Since 1998, the state auditor has conducted four follow-up audits to assess UH and DLNR’s implementation of their specific recommendations to improve the management of Mauna Kea and the Mauna Kea Science Reserve. The follow-up audits were done

¹⁷ Id, page 15.

¹⁸ While the 1998 Audit addressed both UH and DLNR’s management of Mauna Kea and the Mauna Kea Science Reserve, for purposes of this Report, we will be focusing only on UH’s management of Mauna Kea under the CMP.

¹⁹ Id, page 15.

²⁰ Id, pages 34-35.

in 2005,²¹ 2014,²² 2017,²³ and 2019.²⁴ In general, the follow-up audits found that UH had made improvements in managing Mauna Kea, including the adoption of the CMP. However, consistent in all the audits, was UH's failure to adopt administrative rules governing public and commercial activities to ensure effective management and enforcement for the protection and preservation of the natural and cultural resources.²⁵

DEVELOPMENT AND MANAGEMENT OF MAUNA KEA UNDER THE CMP

The CMP was developed to address many of the past concerns by providing a resource management framework to preserve and protect cultural and natural resources by managing existing and future activities and uses on Mauna Kea. Some of the past concerns were noted in the 1998 Auditor's Report, including over emphasis on telescope development and lack of acknowledgement of the cultural significance of Mauna Kea. The CMP was also developed to comply with the legislative intent of conservation lands,²⁶ and judicial decisions, including Judge Hara's decision²⁷ and the *Ka Pa'akai*²⁸ analytical framework related to the protection of Native Hawaiian rights.

²¹ *Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*, Report No. 05-13, December 2005.

²² *Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*, Report No. 14-07, August 2014.

²³ *Follow-Up on Recommendations from Report No. 14-07, Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*, Report No. 17-06, July 2017.

²⁴ *Report on the Implementation of State Auditor's Recommendations 2014-2017*, Report No. 19-15, November 2019.

²⁵ UH Administrative Rules, Chapter 20-26 entitled Public and Commercial Activities on Mauna Kea Lands was adopted by the BOR on November 6, 2019, signed by the Governor, and became effective on January 23, 2020.

²⁶ HRS, §183C-1, states that "The legislature finds that lands within the state land use conservation district contain important natural resources essential to the preservation of the State's fragile natural ecosystems and the sustainability of the State's water supply. It is therefore, the intent of the legislature to conserve, protect, and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare."

²⁷ *Mauna Kea Anaina Hou, et al. v. Board of Land and Natural Resources*, Civ. No. 04-1-397, Decision and Order dated January 19, 2007 (Judge Hara's decision). Pursuant to Judge Hara's decision, BLNR shall approve a comprehensive management plan that considers multiple uses as a precondition for any future development on Mauna Kea.

²⁸ *Ka Pa'akai O Ka 'Aina v. Land Use Commission*, 94 Haw. 31, 7 P.3d 1068 (2000) (*Ka Pa'akai*). The Hawai'i Supreme Court in its decision in *Ka Pa'akai* provides government agencies an analytical framework to ensure the protection and preservation of valued cultural, historical, and natural resources. Section 2.3.3 of the CMP specifically describes how the CMP applied the analytical framework to ensure that the constitutionally guaranteed traditional and customary Native Hawaiian rights and cultural, historical, and natural resources are preserved and protected.

In addition to the legal requirements, the CMP was developed based upon an extensive community engagement process. The basis for the consultation process was an acknowledgment by UH that past planning and management efforts had not fully engaged the community or genuinely considered their concerns. The CMP aptly summarizes this sentiment:

During the recent Outrigger Telescope permitting process, many in the Hawaiian community experienced frustration as they attempted to express their perspectives and suffered psychological and spiritual hurt as their values and traditions were not given the attention and respect they deserved. As a result, they lost trust in the University as a responsible steward of the UH Management Areas and criticized the University for circumventing its own management policies. Subsequently, many individuals dissociated themselves from the process or resorted to other venues to express their views and advocate their position.²⁹

The CMP was prepared in a methodical manner, primarily based upon the *Ka Pa‘akai* analytical framework, to form the foundation for the 103 MAs. These MAs are designed to preserve and protect the cultural and natural resources by managing the existing and futures uses and activities on Mauna Kea.

- Section 1 – Cultural Orientation. Introduces the reader or user of the CMP to the cultural significance of Mauna Kea from a historical and contemporary use perspective;³⁰
- Section 2 – Introduction. Describes the CMP as an integrated planning tool for resource management, drawing upon the Hawaiian approach to managing cultural and natural resources as well as contemporary science-based management approaches. This section also describes the CMP goals, objectives, and desired outcomes upon which we evaluate whether UH’s implementation of the CMP is in furtherance of these goals;
- Section 3 – Management Environment. Provides an overview of the physical UH Management Areas, history of the previous planning and management plans, and describes the management responsibilities over Mauna Kea;
- Section 4 – Community Engagement Process. This process recognized that many in the public, especially the Native Hawaiian community on Hawai‘i Island felt anger, hurt and mistrust towards UH for not involving them in management decisions related to Mauna Kea. This section describes the culturally sensitive community engagement process based upon cultural values and the non-traditional methods of engagement to ensure meaningful participation by the public;

²⁹ CMP, page 4-1.

³⁰ We acknowledge that not all Native Hawaiians may share the view that Mauna Kea is culturally significant. During the public engagement process for this Report, there is a strong Native Hawaiian constituency that assert Mauna Kea is not culturally sacred and in fact, the CMP’s assertion that Mauna Kea is culturally significant is offensive to this Native Hawaiian constituency. However, during the community engagement process for the development of the CMP, there was overwhelming sentiment by many of the Native Hawaiian stakeholders that participated in the process, that Mauna Kea is culturally significant.

- Section 5 – Cultural and Natural Resources. The CMP relied upon previous documentation to identify the valued cultural resources,³¹ historic and archaeological resources, and natural resources. Section 5 is the 1st step in the *Ka Pa‘akai* analysis to identify the valued cultural, natural, and historic resources within the state conservation lands;
- Section 6 – Human Environment. This section described all the existing and future activities and uses on Mauna Kea and the threats to the cultural, natural, and historic resources. Section 6 is the 2nd step in the *Ka Pa‘akai* analysis to determine the impacts that the proposed management framework would have on the valued resources;
- Section 7 – Management Component Plans. Section 7 is the 3rd step in the *Ka Pa‘akai* analysis that identifies the feasible actions, MAs, or mitigation measures to reasonably protect the valued cultural, natural, and historic resources. This is the heart of the CMP that sets forth desired outcomes for each of the MCPs, specific MAs that UH, and specifically OMKM, is required to implement to ensure the protection and preservation of the cultural and natural resources.

The CMP was approved by BLNR on April 7, 2009 and the UH BOR on April 16, 2009. As a condition of BLNR approval, four sub-plans were required to be developed within one year of approval of the CMP. The four sub-plans include: (1) *Natural Resource Management Plan for the UH Management Areas on Mauna Kea* (September 2009), (2) *Cultural Resources Management Plan for the UH Management Areas on Mauna Kea* (October 2009), (3) *Mauna Kea Public Access Plan* (January 2010), and (4) *Decommissioning Plan for the Mauna Kea Observatories* (January 2010).

³¹ In particular, the CMP relied upon the extensive ethnographic interviews and cultural reports prepared by Kepa and Onaona Maly. Maly, K and O. Maly (2005). *Mauna Kea, ka piko Kaulana o ka aina: Mauna Kea, the famous summit of the land*. Hilo, HI, Kumu Pono Associates LLC: 650 p.; Maly, K. and O. Maly (2006). *Appendix A: Mauna Kea-Ka Piko Kaulana o Ka ‘Aina*.

PUBLIC ENGAGEMENT PROCESS AND SUMMARY

The public engagement process and summary is a critical component of not only the independent evaluation but the path forward for stewardship of Mauna Kea. When contracting with Ku'iwalu, DLNR emphasized the importance of an extensive public engagement process to fully inform them and BLNR of the public's sentiments about current and future stewardship of Mauna Kea. Public sentiments include stakeholders to Mauna Kea and the general public. Thus, in addition to the technical evaluation of UH's implementation of the CMP, this Report includes the public's assessment of UH's management or stewardship and governance of Mauna Kea.

Almost everyone has an opinion or comment on Mauna Kea. However, not all comments are necessarily related to the implementation of the CMP.³² For the integrity of the independent evaluation, we wanted to ensure that the public assessment and UH's assessment were comparing "apples with apples," in other words, comparing the same CMP MCPs. Thus, while we read all of the comments, for the purposes of the independent evaluation, we considered those comments that were specifically related to UH's implementation of CMP MAs. However, this does not diminish or disregard the time people took to submit their comments or the strong sentiments that were expressed in their comments. For those who submitted comments within the comment deadline, we have listed their names on Appendix A1.³³ We have greatly appreciated all of the comments that were submitted.

STAKEHOLDERS AND GENERAL PUBLIC

Similar to the CMP community engagement process, there are families, organizations, and agencies who have an active (and in some cases, cultural or lineal) relationship to Mauna Kea. There are certain stakeholders whose views and perspectives were given careful consideration because of their cultural, legal, or regulatory affiliation with Mauna Kea. They include the following:

- UH Management Entities
- Families who have cultural or lineal connections to Mauna Kea
- Hawaiian Cultural and Religious Practitioners
- Astronomical Community
- Aha Moku Advisory Committee

³² In fact, many comments we received were either for or against the construction of TMT on Mauna Kea. While this Report is not for or about TMT, Hawaiian sovereignty, ceded lands, compensation, or renewal of the state lease, many of the comments we received were about these topics. This Report briefly describes some of these comments in the Section titled "Issues and Concerns beyond the Scope of this Report."

³³ Appendix A1 is a comprehensive list of all the individuals and groups we engaged with during the CMP evaluation process. This list includes those who may have received email updates, participated in stakeholder meetings, attended virtual public meetings, left a comment on the website, or emailed a comment directly to Ku'iwalu.

- OHA
- Environmental Groups
- Hawaiian Educational and Business Organizations
- Commercial and Recreational users
- Elected Officials
- Government Agencies

In addition to stakeholders, the viewpoints of the general public are important and were given due consideration in the evaluation process.

CONSULTATION PROCESS AND METHODS

As previously noted, Ku'iwalu utilized a variety of non-traditional approaches to engage the general public and stakeholders to solicit their input on UH's implementation of the CMP and stewardship of Mauna Kea. We engaged with nearly 500 individuals or organizations during the evaluation process.³⁴ The following methods were used to solicit public input:

Email Updates

- 1st email – May 15, 2020. Ku'iwalu initially emailed letters to those individuals or groups who were consulted during the preparation of the CMP in 2009. In addition, emails were sent to a list of known stakeholders involved in Mauna Kea at the time. The first email included a letter introducing Ku'iwalu, a copy of DLNR's May 15, 2020 Press Release announcing their review of the Mauna Kea CMP, the CMP Report and CMP Appendices from April 2009. Appendix A2 is a copy of the email, and attachments of Ku'iwalu's Introduction Letter, and DLNR's Press Release;³⁵
- 2nd email – July 23, 2020. The 2nd email update included a letter that announced the launch of the Project Website www.evaluateTheCMP.com and Facebook page (Share Your Mana'o on the Mauna Kea CMP). The letter indicated that the website provides easy access to the CMP, reference documents provided by UH, as well as other resources. It also explained ways to provide comments and give input during the evaluation process. As the process proceeded, the email updates were expanded to include those who participated in stakeholder meetings, those who registered for the virtual public meetings, or those who may have submitted comments. Appendix A2.1 is a copy of the email and the July 23, 2020 letter;

³⁴ See Appendix A1.

³⁵ The April 2009 CMP [Report](#) and CMP [Appendices](#) can be found on DLNR's website.

- 3rd email – August 26, 2020. The 3rd email update announced the three virtual public meetings as well as information of the many different ways to provide comments before the October 16, 2020 comment deadline.³⁶ Appendix A2.2 is a copy of the email;
- 4th email – September 3, 2020. The 4th email update announced the three virtual public meetings and how to register for each meeting. It also provided a link to the website to participate in a number of informal community polls. Appendix A2.3 is a copy of the email sent to the expanded list of stakeholders;
- 5th email – September 24, 2020. The 5th email was a reminder to register in advance for the virtual public meetings. Appendix A4 is a copy of the email reminder.
- 6th email – December 2020. The 6th email will be to announce that the Report has been submitted to DLNR and posted on the website for thirty (30) days, thereafter the website will be removed since the Report has been submitted. DLNR will then provide a link to the Report on its Mauna Kea website. The email will be sent to the comprehensive list referenced in Appendix A1.

Individual and Stakeholder Meetings

Ku'iwalu convened over forty (40) virtual stakeholder meetings and telephone conferences during the course of the evaluation process. The small talk story meetings permitted discussions that could be candid, confidential, and respectful. The meetings ranged from 1-2 hours and focused on getting specific comments on UH's implementation of the CMP MAs and their stewardship of Mauna Kea. These stakeholder meetings ranged from the various UH Management Entities who have a role in the management of Mauna Kea, relevant DLNR Divisions, cultural and religious practitioners, individuals and families who have cultural or lineal connections to Mauna Kea, NHOs, Observatories, Imua TMT, KAHEA, Kia'i Alaka'i and elected officials. Appendix A3 is a list of stakeholders we met with. This list of stakeholders was added to the list for email updates.

Virtual Public Meetings

In an effort to reach out to the broader public, we held three virtual public meetings. The meetings were scheduled on different days of the week and at different times to make them more accessible to the public. Those wanting to attend the virtual meetings were required to register in advance in order to receive a link to attend the meetings. Appendix A4 is a list of those who registered for each of the three virtual public meetings. In general, more people registered than actually joined the meeting.

³⁶ The deadline for comments was extended to November 5, 2020 as posted on the website.

During each of the two-hour virtual public meetings, we provided a brief presentation on the CMP and evaluation process. However, most of the meeting was dedicated to providing the public with an opportunity to give specific comments on UH's implementation of the CMP MAs. Appendix A4 also includes a copy of the meeting agenda, and the power point presentation that was shared at the meeting.

Website

We created a dedicated website as another means to inform, educate, and solicit public input on the independent evaluation, www.evalutetheCMP.com. Not only did the website provide information about the CMP, the evaluation process, and links to an exhaustive listing of resource materials related to Mauna Kea, but one of the primary purposes for the website was to provide the public another platform to submit comments. We received approximately 70 comments through the website. Individuals could leave comments, but their comments could not be viewed by others. Appendix A5 is a copy of some of the information posted on the website. The comments are not included in the Appendix because we did not get permission and most of the comments were not specifically related to the implementation of the CMP.

Facebook

At the time we launched the website, we launched a Facebook page as a social media platform to supplement the website. The Facebook page was an additional way of distributing information and announcements. No public comments were permitted to be posted to the Facebook page, but viewers were directed to the website to leave their comments.

Comments Submitted to Ku'iwalu Related to UH's implementation of the CMP

Besides the methods noted above, some comments were sent directly to Ku'iwalu. For example, we received written comments from the OHA, Imua TMT, Kimo Stone, Mililani Trask on behalf of Wahine Apapalani Hawaiian Cultural Practitioners, Bianca Isaki on behalf of KAHEA, Senator Kurt Fevella, Thayne Currie, Flores-Case 'Ohana, and numerous email form submissions from Mauna 'Aelike/Consensus Building 'Ohana.³⁷

Appendix A6 is a copy of these comments.

³⁷ Appendix A6 includes a copy of Kealoha Pisciotta's comments on behalf of Mauna Kea Anaina Hou, Mauna Kea Hui, Mauna Kea Moku Nui 'Aelike/Consensus Building 'Ohana and a copy of one of the form submissions received via email from Mauna 'Aelike/Consensus Building 'Ohana whose contents are identical to Kealoha Pisciotta's comments. We did not include in Appendix A1 all of the names who submitted Mauna 'Aelike/Consensus Building 'Ohana forms after November 5, 2020, the extended deadline to submit comments as posted on the website.

SUMMARY OF THE COMMENTS RELEVANT TO UH'S IMPLEMENTATION OF THE CMP³⁸

While the next section of the Report will include the public's assessment of UH's implementation of the CMP, this section of the Report will summarize some of the major themes specifically relevant to UH's implementation of the CMP. The Section titled "issues and Comments beyond the Scope of the CMP" will summarize or list some of the comments that are beyond the scope of the implementation of the CMP but should be considered in broader decision making related to Mauna Kea.

The cultural value of Mauna Kea continues to be "unrecognized" by UH as are the rights of Native Hawaiian cultural and religious practitioners

From the building of the initial telescopes in 1968 to the 1998 Auditor's Report, and to the implementation of the CMP, a consistent concern has been that UH has primarily focused on telescope development on Mauna Kea and the cultural value of Mauna Kea has been disregarded or largely unrecognized.³⁹ While we received comments from some Native Hawaiians who assert that Mauna Kea is not sacred, we received many more comments from members of the Native Hawaiian community and the general public that Mauna Kea is culturally significant. We also received specific comments from individuals and families who continue to exercise traditional and customary practices on Mauna Kea that have not been consulted with and felt that their rights have been disregarded or disrespected by OMKM.

For example, there was strong sentiment by Native Hawaiians active in the protest on Mauna Kea that the determination by OMKM as to what cultural resources and historic sites are significant, including the removal of some of those resources is not only inconsistent with the CMP but it also violates their constitutional protections under Article XII, Section 7 of the Hawaii State Constitution. They specifically assert that there has been little or no consultation with known families who have cultural or lineal connections to Mauna Kea, Kūpuna, and cultural and religious practitioners before the removal of these resources. They assert that these actions by OMKM are inconsistent with CMP MA CR-1, CR-4, CR-5, CR-6, CR-7, CR-8, CR-9, and CR-10.

Another example noted in the comments we received was that UH's initial draft of the administrative rules proposed to regulate Native Hawaiian traditional and customary rights while providing exemptions for commercial users. The commenters note that only after vocal opposition to the draft rules, were the final administrative rules revised to provide that "Native Hawaiian traditional and

³⁸ The comments provided during this process shall only be used for this independent evaluation. No permission has either been sought or granted to use the information, comments, or disclosures beyond this Report. No specific comments are attributed to any individual as we did not request nor receive permission to do so.

³⁹ 1998 Audit Report, Summary page.

customary rights as recognized and protected under article XII, section 7, of the Hawai'i State Constitution shall not be abridged."⁴⁰

There is a lack of genuine community engagement and cultural education by UH as required by the CMP.

A consistent comment from outside of UH Management Entities is that there has not been genuine community outreach and cultural education as required by CMP MA EO-1, EO-2, EO-3, and EO-7. Even some UH Management Entities note that this is one area in the CMP that UH could improve on. Comments by UH-Hilo Entities believe that community engagement was primarily through MKMB meetings and UH BOR meetings as these meetings are open to the public. UH-Hilo Entities felt that beyond the MKMB publicly noticed meetings, it was the role of the UH System in Mānoa to manage the communications with the community because UH-Hilo Entities do not have the resources, given that most of them are voluntary boards.

In addition to OMKM's deficiencies noted above, the CMP MA related to Education and Outreach, there were comments that OMKM failed to inform the public of the results of the management activities in a timely manner and failed to timely complete the five-year review as required under CMP MA MEU-1 and MEU-2, respectively.

With respect to cultural consultation, UH-Hilo Entities believe that it is the kuleana of KKM to engage with the Native Hawaiian community because of their cultural experience and expertise. Although KKM meetings are not subject to the sunshine law and therefore not required to be open to the public, KKM is comfortable in making their collective recommendations to OMKM based upon their cultural experience and expertise. Like MKMB, members of KKM commented that they are a voluntary board who are doing the best they can with their limited resources. KKM has provided OMKM recommendations on removal of offerings, scattering of human remains, construction of new cultural features including stacking of rocks, and they review any proposed changes by observatories to their facilities on Mauna Kea. Although most of the UH Management Entities believe they are in compliance with the CMP, the UH BOR has directed the 'Imiloa Astronomy Center to take a more active role in community engagement and cultural education.⁴¹

⁴⁰ Section 20-26-3, Hawaii Administrative Rules (HAR).

⁴¹ University of Hawai'i Board of Regents Resolution 19-03, Adopted November 6, 2019, Amended, July 1, 2020 (BOR Resolution 19-03). BOR Resolution 19-03 specifically determined that there remain unmet responsibilities and ongoing compliance issues that have delayed completion of certain recommendations and requirements under the Management Plans. Action Item No. 5 specifically provides, "In collaboration with OMKM and MKSS, the 'Imiloa Astronomy Center shall develop a suite of educational programs regarding Maunakea including but not limited to Native Hawaiian culture, history, environmental, and biological considerations designed for tour guides and drivers, employees, contractors, recreational users, scientists and observatory workers, and visitors, as required by the Management Plan, by August 31, 2020. OMKM shall report to the Board of Regents on its plans and progress to implement said educational programs at its February 2020 meeting. Administration shall make a budget request during the 2020 legislative session to fund this action item."

UH has generally done a good job in managing the cultural and natural resources, but there is no independent review or accountability on the integrity of the studies or reports, and the completion of many of the CMP actions are overdue.

Most of the comments we heard from government agencies, observatories, commercial and recreational users, and some Native Hawaiians, expressed that the cultural and natural resources are being better managed and protected by OMKM than prior to the 1998 Audit. Many have indicated that the wekiu bug population has increased, the historic sites are being monitored regularly under the archaeological monitoring plan, the OMKM Rangers are doing a great job educating visitors about staying on the trail and picking up their trash, the Mauna Kea silversword population has increased, and the access road is better maintained, especially during the snowy winter season.

On the other hand, we also heard comments that archaeological monitoring plans were long overdue, that the reports indicating the wekiu bug population increase were to support delisting it from the endangered species list, that the archaeological work for the northern plateau was altered to show no cultural sites where TMT is going to be built, and that cultural descendants from the area were never consulted on those reports. These comments are related to MAs NR-1⁴² to NR-18. This independent evaluation did not review the reports or studies referenced by OMKM for accuracy or scientific integrity.

There is an inherent conflict of interest by having UH as the lessee of the state conservation lands and the applicant for new telescope development.

We heard strong comments from members of the Native Hawaiian community that UH's role to advocate for new telescope development as the applicant for the CDUA conflicts with UH's ability to properly manage and protect the valued cultural and natural resources within the state conservation lands. In relevant part, Section 7.3.4 of the CMP related to Future Land Uses specifically emphasized that "the CMP manages resources, it does not advocate or promote new telescope development."

Contrary to the CMP, the dual roles of UH as land manager and as developer creates at least an appearance of a conflict of interest that have caused some Native Hawaiians to question the credibility and integrity of the scientific, historic, cultural, and environmental reports that OMKM produced pursuant to the CMP MAs. Some comments specifically noted that CMP MA FLU-2 required UH to develop land use zones in the Astronomy Precinct and the goal of this process was to refine telescope siting areas defined in the 2000 Master Plan based upon updated cultural and natural resource information. For example, TMT is being proposed to be built in the northern plateau in an area where the 2000 Master Plan

Exhibit A ⁴² NR refers to Natural Resources (NR). See CMP section 7.1.2.
Mauna Kea Hui's Motion

says no telescope development. This conflict of interest adds to the diminished trust between UH and many members of the Native Hawaiian community.

We also heard comments from UH-Hilo Entities that it was “awkward” having UH as the applicant for the CDUA for TMT. In fact, they felt their relationship with members of the Native Hawaiian community changed when they became the applicant for the TMT CDUA; they felt they were no longer viewed as being neutral land managers but telescope developers. Beyond the issue of the appearance of a conflict of interest, the UH Management Entities have commented that ideally, they would prefer having a smaller state lease of only the 525 acres of the Astronomy Precinct and contribute funds to DLNR or another appropriate entity to manage the 10,000 acres consisting of the Natural and Cultural Preservation Area. Similar comments were made by some of the observatories. There were a few comments that wanted to explore the possibility of having a Native Hawaiian entity or third party manage all the state conservation lands or at least the 10,000 acres of Natural and Cultural Preservation Area.

The current UH governance structure is not effective in managing Mauna Kea.

It is worth noting that most of the comments related to the effectiveness of the governance structure was made by UH Management Entities. The UH-Hilo Entities strongly believe that decision making related to Mauna Kea needs to be made by UH-Hilo Entities on Hawai'i Island. In addition, these same entities believe that OMKM is doing a fairly good job in implementing the CMP.

On the other hand, several of the UH Management Entities outside of UH-Hilo believe that the public perception is that OMKM is not doing a good job stewarding Mauna Kea. They believe that OMKM has not engaged the community, in particular members of the Native Hawaiian community. They also believe that OMKM has not effectively developed cultural education materials, information, or opportunities to collaborate with members of the Native Hawaiian community and organizations to promote cultural education and understanding of Mauna Kea. In response to the perceived deficiency, UH BOR Resolution 19-03 has proposed and begun implementing structural changes to the management of Mauna Kea.⁴³

With respect to the broader public comments on the effectiveness of the UH governance structure, most see UH as one entity. They either believe that the UH existing structure is doing a good job, or they believe that UH is mismanaging Mauna Kea and there is very little in between. There were a few comments that wanted to explore the possibility of having a Native Hawaiian entity or third party manage all the state conservation lands or at least the 10,000 acres of Natural and Cultural Preservation Area.

⁴³ BOR Resolution 19-03. Action Item No. 9 provides in relevant part, “As part of the reorganization and restructuring plan, an in-depth analysis will be done to determine whether the management of the Maunakea Science Reserve would be better served if transferred to a governmental authority or other third party entity, or through alternate management mechanisms.”

ISSUES AND COMMENTS BEYOND THE SCOPE OF THE CMP

There were numerous comments that were beyond the scope of the implementation of the CMP. We did not want to discount these comments as some of these issues had been identified in the CMP (see Section 2.1.4) and continue to linger as unresolved issues. Similar to the CMP, we wanted to respect and honor those comments by noting them below for appropriate consideration beyond this Report.

UH has not kept its “promises” to remove telescopes from Mauna Kea before proposing new telescope development.

This comment primarily related to the issue of timely decommissioning telescopes from the summit of Mauna Kea before any new telescope is constructed. As noted in the CMP, “the basis for this [decommissioning] was not only to preserve a ‘zero net gain’ of telescopes, but also because of the recognition that decommissioning is perhaps the most tangible form of actually listening to the community’s concerns that before new telescopes can be considered some obsolete facilities must come down.”⁴⁴ In listening to members of the Native Hawaiian community, for many who say UH hasn’t kept their promises, they refer to UH’s representations during the early years of the state lease that there would only be 13 telescopes. But now, UH is proposing the world’s largest telescope (TMT) before removing any telescope; 13 to 0.⁴⁵ We also heard from non-Native Hawaiians, that in order to show some good will, UH needs to facilitate the decommissioning process. In response, the UH BOR has established an accelerated schedule for the decommissioning of up to possibly five (5) telescopes.⁴⁶ However, there are many people in the community, including Native Hawaiians, who would like to see the retention of existing telescopes that are not obsolete as well as the construction of TMT because of the educational and economic benefits beyond the lease termination in 2033.

UH should not be managing the cultural and natural resources and should only manage the astronomy precinct.

Similar to the comments we heard related to governance, there were many comments, both from within UH and external to UH, that expressed that UH should not be managing the 10,763 acres of Natural and Cultural Preservation Area. Some of the comments expressed by UH Management Entities are that managing the state conservation lands to preserve and protect resources is outside of UH’s mission of education. Other comments, especially by members of the Native Hawaiian community is that UH should not be managing any of the state

⁴⁴ CMP, page 4-6.

⁴⁵ Some within the Native Hawaiian community say 13 telescopes for astronomy and 0 telescopes have come down for the Native Hawaiian community.

⁴⁶ BOR Resolution 19-03. Action item No. 1 relates to the decommissioning of the Caltech Submillimeter Observatory and the Hokukea sites. Action item No. 2 relates to establishing a schedule for the decommissioning process of the two sites by December 31, 2021. Action item No. 4 sets a date of December 30, 2025 to determine decommissioning of three (3) additional observatory sites, if required.

conservation lands at Mauna Kea because they do not have the cultural expertise to be stewarding one of the most significant cultural resources to the Native Hawaiian community. On the other hand, there were comments that if the 10,763 acres were to be returned to DLNR to manage, DLNR does not have the resources or capacity to preserve and protect the cultural and natural resources within the preservation area; the resources are better protected under UH. In addition, UH's management, especially by the OMKM Rangers, of the state conservation lands, provides additional protection to the adjacent DLNR's Mauna Kea Ice Age Natural Area Reserve and the State Mauna Kea Forest Reserve.

There is presumption that BLNR is going to renew the state lease to UH for the state conservation lands at Mauna Kea.

We received many comments that the renewal of the state lease to UH is a “done deal” because BLNR would not have approved the sublease to TMT if they did not anticipate renewing the state lease to UH. There were many comments by members of the Native Hawaiian community, that the state process is not fair, and it favors telescope development. For this reason, several of those same community members expressed that they do not trust UH, DLNR, or even the independence of this Report.

Other issues raised that were beyond the scope of the CMP and not fully discussed.

Rather than going into great detail, the following is a list of those issues:

- Use of ceded lands which have been “stolen” from the Hawaiian Kingdom;
- \$1 a year for lease rent does not accurately reflect the market value of the free telescope viewing time to UH;
- Ownership of the access road;
- Role of the Department of Hawaiian Home Lands in the management of Mauna Kea;
- Establish a Mauna Kea Reserve Commission, similar to the Kaho‘olawe Island Reserve Commission, to oversee the management of Mauna Kea;
- There are really more than 13 telescopes on Mauna Kea because some observatories have multiple facilities; and
- The State should use the federal Section 106 consultation process to engage Native Hawaiian individuals and organizations.

EVALUATION PROCESS AND OUTCOME

CMP REPORTING AND EVALUATION REQUIREMENTS

Section 7 of the CMP, describes the natural progression from (1) the MAs that are needed to address the various management needs, (2) that the MAs are organized by topic into four (4) major MCPs, (3) the MCPs were developed using the best available scientific and cultural information and community input, to support the **mission** to preserve, protect and enhance the cultural and natural resources within the UH Management Areas, and (4) each MCP emphasized the importance of coordinating with other agencies, adjacent landowners, and other stakeholders, including cultural practitioners and families with cultural or lineal connections to Mauna Kea to incorporate Native Hawaiian cultural values and traditional knowledge into management planning and activities.⁴⁷

The Mission of the Office of Mauna Kea Management is to achieve harmony, balance and trust in the sustainable management and stewardship of Mauna Kea Science Reserve through community involvement and programs that protect, preserve and enhance the natural, cultural and recreational resources of Maunakea while providing a world-class center dedicated to education, research and astronomy.

Section 7.4.2 of the CMP outlines the process for monitoring, evaluating, and updating the CMP to meet the “desired outcomes”⁴⁸ as set forth in the CMP. The purpose of the desired outcome is to “determine whether management actions are achieving the goals of the CMP and to provide a process for improving and updating management strategies through evaluation and revisions of the CMP.”⁴⁹ To determine whether the desired outcomes have been achieved, the CMP requires regular monitoring⁵⁰ and evaluation⁵¹ of the CMP to determine if the management actions are effective over time and are meeting management needs to ensure the best possible protection is afforded Mauna Kea’s resources. Pursuant to the adaptive management approach, evaluations should be done annually with review and revisions occurring every 5 years as updated information on the resources become known. Five-year evaluations and revisions should include consultation with federal and state agencies and the local community, to

⁴⁷ CMP, page 7-1.

⁴⁸ “Desired Outcome” summarizes the goal(s) of the management component plans. CMP, page 7-1.

⁴⁹ CMP, page 7-63.

⁵⁰ MA MEU-1 requires “OMKM to provide an annual progress report describing in detail the management goals, objectives, and actions for the year and what progress was made towards meeting them. The Progress Report should also describe actions to be taken to improve the program for the next year(s). The Progress Report is not intended to be a status report on the resources in the UH Management Areas; rather, it is meant to inform management and stakeholders of the progress of the program and direction it is to take in the future.” In addition, MEU-1 requires OMKM to provide Five Year Outcome Analysis Reports. CMP, at page 7.65.

⁵¹ MA MEU-2 provides that the CMP should be updated every five years, based on data collected during various program management activities (e.g. natural or cultural resources monitoring, research projects). Id.

inform stakeholders on program progress, and to gather input on changes or additions to management activities.

While OMKM has submitted annual reports to BLNR on their implementation of the MAs, OMKM has not prepared the Five-Year Outcome Analysis Report (Analysis Report). Presumably, the Analysis Report would have utilized the adaptive management approach and summarized the data collected during the monitoring and research studies to determine the effectiveness of the management actions on preserving and protecting the resources on Mauna Kea. Thus, in the absence of the Analysis Report, we had to utilize an alternative evaluation model to conduct the independent evaluation.

THE LOGIC MODEL METHOD WAS USED TO CONDUCT THE INDEPENDENT EVALUATION

Based upon the Project Team's experience and expertise, a Logic Model⁵² approach was determined to be the most appropriate to conduct the independent evaluation of OMKM's implementation of the CMP. This model specifically focuses on whether the MAs that were completed (output) by OMKM achieved the desired outcomes as set forth in each of the MCPs. Each MCP identified MAs to address the needs⁵³ in order to achieve the desired outcomes.

There are four (4) MCPs:

- 7.1 Understanding and protecting Mauna Kea's Cultural and Natural Resources
 - 7.1.1 Native Hawaiian Cultural Resources
 - 7.1.2 Natural Resources
 - 7.1.3 Education and Outreach
 - 7.1.4 Astronomy Resources
- 7.2 Managing Access, Activities and Uses
 - 7.2.1 Activities and Use
 - 7.2.2 Permitting and Enforcement

⁵² A logic model is a systematic and visual way to present and share an understanding of the relationship among resources that were chosen to operate your program, the activities you plan, and the changes or results you hope to achieve." W.K. Kellogg Foundation 2004, <http://toolkit.pellinstitute.org/evaluation-guide/plan-budget/using-a-logic-model/>

⁵³ The CMP defines "Need" as the background information on what type of management actions are needed to achieve the desired outcome and why they are needed. To achieve the desired outcomes, management needs were developed in four areas: education, information gathering, management measures, and rules and enforcement.

- 7.3 Managing the Built Environment
 - 7.3.1 Infrastructure and Maintenance
 - 7.3.2 Construction Guidelines
 - 7.3.3 Site Recycling, Decommissioning, Demolition and Restoration
 - 7.3.4 Considering Future Land Use

- 7.4 Managing Operations
 - 7.4.1 Operations and Implementation
 - 7.4.2 Monitoring, Evaluation, and Updates

For the independent evaluation, the Project Team reviewed, (1) the MCP MAs and desired outcomes, (2) OMKM’s implementation of the MAs based upon their annual reports and updates, (3) public input based upon comments provided through the website, the three virtual community meetings, and stakeholder input, and (4) the specific impact of OMKM’s actions to achieve the desired outcomes. The details of these reviews are included in Appendix B.

However, for ease of review, we have prepared a Summary of the Independent Evaluation for each MCP in tables below. Each table has five columns as shown:

MCP Section and Desired Outcome	OMKM Implementation Status	Public Input	Independent Evaluation of Impact on Outcome	Recommendations
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The content of each column is described below:

1. The **MCP Section and Desired Outcome** as specifically provided in the CMP;
2. The **OMKM Implementation Status** shows the total number of actions or activities implemented in that specific section and the action status reported in the OMKM 2020 Annual Report;⁵⁴
3. **Public⁵⁵ Input** summarizes a range of some of the comments we received from the three virtual community meetings, comments, website, and stakeholder meetings;

⁵⁴ OMKM 2020 Annual Report to the Board of Land and Natural Resources, Status of the Implementation of the Mauna Kea Comprehensive Management Plan. See Appendix A.7

⁵⁵ “Public” includes interested stakeholders and general public. See Section titled “Stakeholders and General Public” and Appendix A1.

4. The ***Independent Evaluation of Impact on Outcome*** is a qualitative assessment by the Project Team based primarily on public input.⁵⁶ Three levels are indicated: “**Good progress on achieving Outcome,**” “**Some progress on achieving Outcome,**” and “**Minimal progress on achieving Outcome.**”
5. ***Recommendations*** include the type of metric that could be developed in the CMP revision to track outcomes more quantitatively.

⁵⁶ The CMP utilized key concepts from *adaptive management* in developing the management actions. “*Adaptive management* is defined as a systematic process for continually improving management policies and practices for resource protection by learning from the outcomes of past and current management activities. Adaptive management recognizes that there is a level of uncertainty about the ‘best policy or practice for a particular management issue, and therefore requires that each management decision be revisited in the future to determine if it is providing the desired outcome. Management actions in a plan guided by adaptive management can be viewed as hypotheses and their implementation as test of those hypotheses. Once an action has been completed, the next, equally important, step in an adaptive management protocol is the assessment of the actions effectiveness (results). A review and evaluation of the results allows managers to decide whether to continue the action or to change course. This experimental approach to resource management means that regular feedback guides managers’ decision and ensure that future strategies better define and approach the objective of the management plan.” CMP, page 2-6. Since the CMP had not been previously evaluated based a set of metrics or measures, the Project Team has to rely public and other government agencies input to assess whether OMKM effectively implemented the CMP to achieve the desired outcomes.

Table 1: Summary Table on the Independent Evaluation on Achieving the Desired CMP Outcomes

MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
7.1 Understanding and Protecting Mauna Kea's Cultural and Natural Resources				
<p>7.1.1 Native Hawaiian Cultural Resources: Increase understanding and appreciation of Native Hawaiian history and cultural practices related to Mauna Kea to ensure that these practices are protected and respected. Identify, document the condition of, and protect cultural resources and historic properties in the UH Management Areas.</p>	<p>Of the 14 Actions:</p> <ul style="list-style-type: none"> • Five are "ongoing" • Nine are "completed." <p>Training and educational programs have been developed. Many cultural practices have been protected with the HAR.</p> <p>HAR Chapter 2-26 was not adopted until January 2020.</p> <p>OMKM placed ads inviting community members to participate in talk story session. KKM hosted one talk story session on matters related to CMP actions, with representatives from DLNR, DHHL, OHA and members of the Native Hawaiian community.</p>	<p>Materials and training programs developed have insufficient content from Native Hawaiian cultural perspectives and materials prepared by OMKM shows a lack of cultural sensitivity and understanding. Cultural stakeholders feel they have not been consulted about content and protocols on cultural issues or practices.</p> <p>KKM review is not sufficient. KKM meetings are not open and they have not consulted with cultural stakeholders.</p> <p>OMKM has removed cultural offerings, ahus, stackings of pōhaku, and cultural features, without consulting with families who have cultural and lineal connections to Mauna Kea, Kūpuna, cultural practitioners, OHA, and other NHOs (hereinafter collectively NHOs). There is a lack of Hawaiian decision making in matters related to identification and protocols related to cultural resources.</p> <p>Cultural and religious practitioners felt the initial draft admin rules violated Art XII, Section 7.</p> <p>There is a lack of cultural presence on Mauna Kea because all you see are observatories.</p> <p>The archaeological documents are not subject to independent scrutiny. The archaeological monitoring reports have not been timely submitted.</p>	<p>Some Progress on Achieving Outcome</p> <p>Specific actions have been completed or are ongoing. However, the admin rules to protect the cultural resources was not codified until January 2020.</p> <p>Unclear if the materials and training programs are sufficient to increase understanding of Native Hawaiian history and cultural practices related to Mauna Kea.</p>	<p>Actions should be completed in a timelier fashion</p> <p>When developing materials related to Native Hawaiian history and cultural practices, NHOs should be involved in developing and reviewing the materials and providing suggestions.</p> <p>There needs to be greater clarity of the role of KKM with respect to engaging and coordinating with NHOs on cultural issues and protocols.</p>

MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
<p>7.1.2 Natural Resources: Increase understanding of the status of natural resources (biotic and abiotic) and identify threats to these resources in order to better protect and preserve unique geological features, ecosystem functions, subalpine and alpine habitats, and biological communities through adaptive management of stressors and threats.</p>	<p>Of the 18 Actions</p> <ul style="list-style-type: none"> • Two are “completed/ongoing” • 15 are “ongoing” • The status of NR-14 requiring use of adaptive management to review programs annually and update CMP every 5 years based on results of program review, is reported as “ongoing.” However, it is unclear if programs have been reviewed annually. Also, there had not been a revision of the CMP since the original. <p>HAR effective January 2020 to limit threats to natural resources.</p> <p>Studies were undertaken, and plans developed and implemented.</p>	<p>OMKM has done a good job managing natural resources by managing invasive species, protecting the wekiu bug habitat, and conducting biological studies.</p> <p>Baseline surveys took time but are especially important to develop long term management programs.</p> <p>Unsure how to access some of the studies.</p> <p>Studies are not subject to public or peer scrutiny.</p>	<p>Good progress on Achieving Desired Outcome</p> <p>OMKM has done a good job at increasing the understanding of the status of natural resources and identifying threats. The public needs to better understand what is being studied and the results of those studies.</p> <p>Over the past ten years are the natural resources on Mauna Kea in better condition? Same? Worse? What needs to be focused on in the next ten years?</p> <p>People need to know how to access studies.</p>	<p>Studies should be easily accessible to the public – available to download online.</p> <p>Develop a Natural Resources Dashboard that shows metrics that track the status of natural resources, for example: annually what is the number of invasive species? Show a report card on the health of the natural resources.</p>

MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
<p>7.1.3 Education & Outreach: Build & maintain a constituency to engage in active and meaningful stewardship of Mauna Kea, through education and involvement of the public, to support, enhance conservation, and sustain the natural, cultural, and astronomical resources of Mauna Kea.</p>	<p>Of the eight Actions</p> <ul style="list-style-type: none"> • Six are “ongoing” • One is “completed/ongoing” • One is “In progress.” <p>Developed orientation program for people working on Mauna Kea.</p> <p>There have been outreach efforts in schools and with volunteers.</p> <p>Output measures provided in the 2020 Annual Report to DLNR:</p> <p>Approximately 1,500 individuals have a current, valid orientation certificate.</p> <p>124 community updates conducted over 12 years, 63 community outreach events conducted over nine years, and 19 symposiums, conferences and special events conducted over eight years. 30 presentations in the Maunakea Speakers Series. 110 OMKM E-newsletters issued over nine years, and 102 Astronomy E-newsletters issued over six years.</p> <p>Two brochures developed and updated, social media presence, YouTube video, and young-people oriented materials.</p> <p>58 projects with 1,493 volunteers conducted over nine years.</p>	<p>There has been little community engagement and outreach. OMKM needs to develop relationships with the broader community beyond their supporters.</p> <p>The public does not know all the good things that are happening on Mauna Kea. UH does not do a good job communicating to the public about the work being done on Mauna Kea.</p> <p>The orientation video lacks Native Hawaiian cultural perspective and sensitivity of the long-standing hurts, pains, and concerns by the Native Hawaiian community on imbalance between protecting cultural resources and pursuing telescope development.</p> <p>Visitors should be required to take the orientation training or video before accessing Mauna Kea summit to ensure a better understanding of the cultural resources on Mauna Kea.</p> <p>OMKM and KKM have not consulted with NHOs in decision making for management of Mauna Kea.</p> <p>The educational materials lack the cultural perspective.</p> <p>There are members of the Native Hawaiian community who do not believe Mauna Kea is sacred and would like to see telescope use continue on Mauna Kea.</p> <p><i>‘Imiloa’s A Hua He Inoa: Hawaiian Culture Based Celestial Naming program is globally known and admired.</i></p>	<p>Minimal progress on Achieving Outcome.</p> <p>A lot of actions have taken place and been documented by OMKM.</p> <p>However, in the actions undertaken it is unclear if the programs have achieved the desired outcome of building and maintaining a larger and/or stronger constituency to steward Mauna Kea.</p> <p>Also, no sense of how far the programs have reached – for example, the number of unique volunteers v. total number at each session.</p>	<p>Outcome measures could include OMKM implementing metrics on the impact their activities have had on building their constituency; whether workers and visitors to Mauna Kea have increased their awareness and appreciation of Mauna Kea’s cultural, historical, and natural resources. In addition, recommend measuring how well the community’s perception of transparency and involvement have changed.</p> <p>In addition to those who work on Mauna Kea, visitors should be required to watch the video to familiarize themselves with the cultural significance of Mauna Kea.</p> <p>Utilize ‘Imiloa Astronomy Center to develop culturally based materials to educate and raise awareness of the cultural and natural resources on Mauna Kea, including the <i>A Hua He Inoa</i> program. Utilize ‘Imiloa Astronomy Center to take a more active role in community outreach.</p>

MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
<p>7.1.4 Astronomy Resources: Maintain Mauna Kea's unique environment that makes it a premiere location for astronomical observation. Operate the scientific reserve as a buffer zone to prevent the intrusion of activities incompatible with the use of the land as a scientific complex or observatory.</p>	<p>Of the two Actions</p> <ul style="list-style-type: none"> • Two are "Ongoing" <p>Administrative rules became effective in January 2020.</p> <p>Working on monitoring and minimizing the light pollution, radio frequency interference and dust.</p>	<p>Astronomy stakeholders believe that OMKM is doing a good job in managing the area.</p> <p>They believe that OMKM could have more regular, ongoing communications rather than waiting until big issues arise.</p>	<p>Good progress on Achieving Outcome</p> <p>The Administrative rules were passed to formalize protection of the area for astronomy.</p> <p>Timing could have been faster.</p>	<p>Outcome measures could include an annual survey of astronomical stakeholders tracking how well OMKM has done in maintaining the unique environment of Mauna Kea.</p>
<p>7.2 Managing Access, Activities and Uses</p>				
<p>7.2.1 Activities and Uses: Retain and enhance recreational and cultural activities, ensure regulation of commercial activities, and support scientific studies while maintaining adequate protection of resources, educating users regarding resource sensitivity, and ensuring the health and safety of those visiting or working at Mauna Kea.</p>	<p>Of the 12 Actions</p> <ul style="list-style-type: none"> • Eight are "Complete/Ongoing" • Four are "Ongoing" <p>Administrative rules became effective in January 2020.</p> <p>OMKM initiated a study in 2019 to assess the capacity for commercial tour operations.</p>	<p>The community is generally positive about how OMKM has maintained and protected the resources on Mauna Kea. The feeling is that the area has improved significantly under the OMKM management.</p> <p>Rangers received many compliments on their knowledge and guidance that they provide to visitors.</p> <p>There needs to be better management limiting the number of cars allowed to drive the access road to the summit. UH is considering a shuttle service to manage access by visitors.</p> <p>Some of the commercial operators conduct their own cultural orientation to their customers to ensure that they conduct themselves in a respectful and appropriate manner when on Mauna Kea.</p>	<p>Good progress on Achieving Outcome</p> <p>The Administrative rules were passed to codify restrictions and regulations.</p> <p>Timing could have been faster.</p>	<p>Outcome measures could include periodic surveys of Mauna Kea visitors, commercial tour operators, and others accessing the site on how well OMKM is managing the area.</p>

MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
<p>7.2.2 Permitting & Enforcement: Achieve compliance with existing and any new policies and regulations designed to manage and minimize human impacts, to preserve and protect Mauna Kea's resources.</p>	<p>Of the eight Actions</p> <ul style="list-style-type: none"> • Six are "Ongoing" • Two are "Completed" <p>Administrative rules became effective in January 2020.</p> <p>Since 2000, there were 103 community engagement and outreach actions taken related to the development of the administrative rules, including updates, consultations, briefings, open houses, and public hearings.</p>	<p>Generally positive feedback on the level of policies and regulations. Positive level of enforcement primarily attributed to the Rangers.</p> <p>Rangers are doing a good job of educating visitors to stay on the trails and not to park their cars where they can damage the natural and cultural resources.</p> <p>There needs to be better management of the commercial operators and increased fees towards management of Mauna Kea resources; as there is unlimited access by recreational users (tourists), yet cultural practitioners are regulated.</p> <p>Lack of coordination and clarity between County enforcement and DOCARE on jurisdiction of access road.</p>	<p>Good progress on Achieving Outcome</p> <p>The Administrative rules were passed to codify restrictions and regulations, but it took over 10 years to adopt the rules.</p>	
7.3 Managing the Built Environment				
<p>7.3.1 Infrastructure and Maintenance: Manage the built environment by implementing an Operations, Monitoring and Maintenance Plan (OMMP) containing specific maintenance strategies and protocols that will result in minimal disruptions to activities and uses, minimize impacts to the resources, and ensure that permittees remain compliant with their CDUP requirements.</p>	<p>Of the 14 Actions</p> <ul style="list-style-type: none"> • Ten are "Ongoing" • Three are "Completed/Ongoing" • One is "In Progress" <p>Administrative rules became effective in January 2020.</p> <p>An Operations Monitoring and Maintenance Plan was reviewed by KKM and approved by MKMB.</p> <p>Procedures have been put in place and studies are being conducted.</p>	<p>Generally positive feedback on how OMKM is managing and maintaining the infrastructure within the area.</p> <p>Many of the existing observatories are incorporating sustainable technologies into their facilities.</p>	<p>Good progress on Achieving Outcome</p> <p>The Administrative rules were passed to codify restrictions and regulations.</p> <p>Timing could have been faster.</p>	<p>Recommend reporting on the outcome of the various studies being conducted and how those studies will be used in the future.</p>
<p>7.3.2 Construction Guidelines: Minimize adverse impacts to resources during all phases of construction, through use of innovative best management practices.</p>	<p>Of the nine Actions</p> <ul style="list-style-type: none"> • Nine are "Ongoing" <p>TMT is the first project requiring construction guidelines. All the guidelines have been included as part of the proposed TMT Management Plan in its CDUA.</p>	<p>Given that construction has yet to begin, no feedback on how well the adverse impacts have been minimized.</p> <p>KKM is reviewing any construction activity that could involve ground disturbance, to ensure cultural resources are not disturbed.</p>	<p>Good progress on Achieving Outcome</p>	

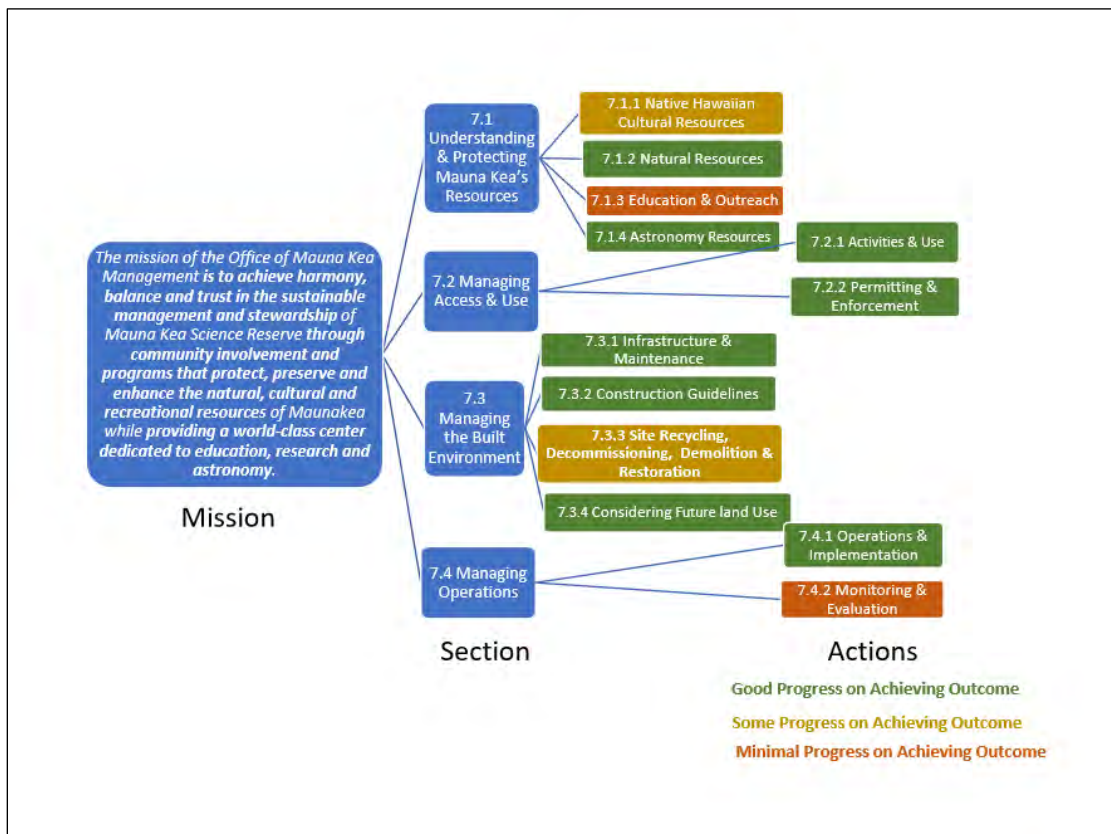
MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
<p>7.3.3 Site Recycling, Decommissioning, Demolition, and Restoration: To the extent possible, reduce the area disturbed by physical structures within the UH Management Areas by upgrading and reusing buildings and equipment at existing locations, removing obsolete facilities, and restoring impacted sites to pre-disturbed condition.</p>	<p>Of the three Actions</p> <ul style="list-style-type: none"> • Three are "Ongoing" <p>All the actions have been incorporated into planning for TMT, the first new facility.</p> <p>The 2010 Decommissioning Plan has a defined process. Two of the sites have started the process in 2019.</p>	<p>Feedback has focused on the observatories that are no longer in use on Mauna Kea. Actions to begin the decommissioning process only started in 2019, leaving community members to wonder why it took so long.</p> <p>UH represented/promised to the community no more than 13 telescopes would be built on Mauna Kea. UH should have timely decommissioned some telescopes before new telescopes are constructed (TMT). There is at least one telescope on Mauna Kea that is not in use, but there has been no attempt to remove it.</p> <p>At the end of the state lease in 2032, all the telescopes need to be decommissioned and the site restored.</p> <p>The CMP does not require decommissioning of telescopes that are not obsolete.</p> <p>BOR, through Resolution 19-03, has established a schedule to timely decommission at least two telescopes by December 2021 and a determination whether to decommission possibly three more telescopes by December 2021.</p>	<p>Some Progress on Achieving Outcome</p> <p>Decommissioning requirements included in the TMT Management Plan.</p> <p>Actions on decommissioning some of the sites only began in 2019.</p>	
<p>7.3.4 Considering Future Land Use: To protect cultural and natural resources in the assessment of future projects.</p>	<p>Of the seven Actions</p> <ul style="list-style-type: none"> • All seven are "Ongoing" <p>Of the seven actions in the plan, all have been incorporated in planning for TMT, the first new facility.</p> <p>UH President Lassner confirmed that TMT will be the last telescope to be built on undisturbed land.</p>	<p>Community input has been both for and against constructing TMT.</p> <p>TMT is being proposed to be developed in an area that is outside of the 2000 Master Plan because OMKM has not developed a map of land use where development will not be allowed.</p>	<p>Good progress on Achieving Outcome</p>	

MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
<p>7.4 Managing Operations</p> <p>7.4.1 Operations and Implementation: Conduct effective operations to support management that is focused on resource protection, education, and public safety.</p>	<p>Of the 5 Actions</p> <ul style="list-style-type: none"> • Two are "Ongoing" • Two are "Completed" • One is "Completed/Ongoing" <p>MKMB meets regularly, holds public meetings which includes consultation with KKM. OMKM, KKM and MKMB are responsible for the review of projects proposed for UH's managed lands compliance with DLNR conservation district rules and the CMP.</p> <p>Public can attend the MKMB meetings.</p>	<p>Public comments were mixed on this MA. The observatories feel that OMKM and MKSS are doing a good job with operation and maintenance. Other government agencies, including DLNR, feel that OMKM and the Rangers are doing a really good job managing the land uses to preserve and protect the cultural and natural resources. The Rangers are the "eyes and ears" on Mauna Kea, they ensure public safety for everyone. There has been great improvement since the 1998 Audit report.</p> <p>There were public comments, especially from members of the Native Hawaiian community that there has been no involvement or discussion with the community and stakeholders on resource management.</p> <p>There is disconnect between UH-Hilo Management Entities and UH Systems.</p>	<p>Good progress on Achieving Outcome</p>	
<p>7.4.2 Monitoring, Evaluation, and Updates: Determine whether management actions are achieving the goals of the CMP and provide a process for improving and updating management strategies through evaluation and revisions of the CMP.</p>	<p>Of the three Actions</p> <ul style="list-style-type: none"> • Three are "Ongoing" <p>MEU-2 requires OMKM to "conduct regular updates of the CMP that reflect outcomes of the evaluation process, and that incorporate added information about the resources."</p> <p>OMKM is in the process of drafting the 5-year Outcome Analysis Report.</p>	<p>Unclear if OMKM has evaluated whether the CMP actions they have undertaken has made progress on achieving stated Desired Outcomes.</p> <p>The public has not been involved nor provided input into OMKM's annual reports to BLNR.</p> <p>OMKM has not completed a 5-year CMP update since the approval of the CMP.</p>	<p>Minimal progress on Achieving Outcome.</p> <p>If the CMP had been reviewed and updated in a timely manner, it is likely that Outcome measures would have been developed and tracked over time.</p>	<p>Develop appropriate measures to track progress being made toward achieving Desired Outcomes. These measures will serve as indicators of whether progress is being made or if actions need to be adjusted to better achieve the Outcomes.</p>

OVERALL SUMMARY OF OMKM'S IMPLEMENTATION OF THE CMP

The diagram below illustrates how the MCPs of the CMP connect to achieve OMKM's Mission. The color codes are the same as used in the Evaluation of Impact on Outcomes. Under the four (4) MCPs, there are twelve (12) desired outcomes. Overall, good progress was made on achieving eight of the desired outcomes; some progress was made on achieving two of the desired outcomes and minimal progress was made on achieving two of the desired outcomes.

Figure 2: The Links Between the OMKM Mission and MCP Management Actions



AREAS WHERE OMKM HAS NOT EFFECTIVELY IMPLEMENTED THE CMP TO ACHIEVE THE DESIRED OUTCOMES

As noted above, OMKM has made, in some cases, significant strides in implementing the CMP to achieve the desired outcomes, particularly in the areas of the “nuts and bolts” of managing the land uses and activities and supporting astronomy. However, in the areas of Native Hawaiian Cultural Resources, Education and Outreach, decommissioning, and evaluation, OMKM has not effectively achieved the desired outcomes. Based primarily on public input, the

following are some of the significant “disconnects” between OMKM and the public, in particular, the Native Hawaiian community, in achieving the desired outcomes:

Outreach and communications

Insufficient outreach and communications with stakeholders and the community resulted in many not knowing what was taking place on Mauna Kea. For example, OMKM conducted many studies, but stakeholders did not understand how to access them. There is no dashboard that shows the conditions of natural resources on Mauna Kea such as number of invasive species reported, number of visitors, etc. overtime. Accessing documents shared at MKMB meetings requires accessing the OMKM website, and multiple clicks to find the right documents.

Cultural Education

Materials and programs developed to educate staff and visitors about Mauna Kea lacked the Native Hawaiian perspective on its importance. Native Hawaiian practitioners, Families who have cultural or lineal connections to Mauna Kea, and NHOs feel they were not adequately or regularly consulted and/or informed about actions taking place on Mauna Kea.

Failure to timely implement certain MAs

OMKM did not complete many of the actions until recently. The HAR related to Mauna Kea was only approved in January 2020. Likewise, the decommissioning process of two telescopes did not begin until 2019. This lack of progress in decommissioning has diminished the public trust in OMKM’s management of Mauna Kea.

OMKM’s updates do not include metrics to evaluate progress towards achieving the desired outcomes

Plan 7.4.2 requires OMKM to “conduct regular updates of the CMP that reflect outcomes of the evaluation process, and that incorporates new information about the resources.” The annual reports to BLNR update the status of the plans’ actions. It does not address progress made toward achieving the Desired Outcome of the MCP. Evaluation of Desired Outcomes could have led to identifying metrics to track outcomes and improve actions.

CONCLUSION

The purpose of the independent evaluation was to, (1) evaluate the effectiveness of UH, and specifically OMKM's implementation of the MCPs, and (2) evaluate UH's efficiency and the governance structure in managing the cultural and natural resources within the UH Management Areas under the CMP. UH's self-assessment and many of the public comments which included members of the Native Hawaiian community and government agencies, have acknowledged that OMKM has implemented most of the 103 MAs within the MCPs. Many have commented that OMKM has effectively implemented many of the MAs that have resulted in protecting and preserving the cultural and natural resources within the state conservation lands.

However, in the areas of untimely adoption of the administrative rules, cultural resources, and education and community outreach, especially with the Native Hawaiian stakeholders, the efforts by OMKM have been ineffective to achieve the desired outcome. The desired outcome is to increase understanding and appreciation of Native Hawaiian history and cultural practices related to Mauna Kea to ensure that these practices are protected and respected. While there are Native Hawaiians who believe OMKM's actions have been respectful of the Hawaiian culture, the greater sentiment was a deep feeling of disrespect by OMKM's actions in managing Mauna Kea, as well as UH's action in pursuing telescope development over protecting the resources.

With respect to the efficiency of UH's governance structure in managing the state conservation lands at Mauna Kea, the UH BOR appears to be internally addressing this issue through their Resolution 19-03. They have taken steps towards developing a reorganization and restructuring plan that would consider an alternative governance and management mechanisms to improve operations and management to make it more efficient, effective, and transparent.

In conclusion, UH, and specifically OMKM, has implemented most of the CMP MAs, and in many cases, effectively implemented them to achieve the desired outcomes of protecting the resources. Unfortunately, the MA related to cultural resources that was designed to respect the Hawaiian cultural practices and resources, and MA related to education and outreach that was intended to restore trust between UH and the Native Hawaiian community have not been effectively implemented. Management plans are created with the best of intentions; but ultimately, the proof is in the implementation.

COMMENDING CASCA'S DECISION NOT TO SUPPORT TMT WITHOUT NATIVE HAWAIIAN CONSENT

One of the TMT project's biggest and long standing supporters, the Canadian Astronomical Association (CASCA), now proclaims that "unless the TMT project has consent from the Native Hawaiians, Canada's astronomical community cannot support its construction on Maunakea."

One of the TMT project's biggest and long standing supporters, the Canadian Astronomical Association (CASCA), now proclaims:

Exhibit A

<https://kanaeokana.net/noconsent>

Mauna Kea Hui's Motion



EXHIBIT "07"

“Unless the TMT project has consent from the Native Hawaiians, Canada’s astronomical community cannot support its construction on Maunakea.” This statement was shared by Dr. Kim Venn this past Tuesday at CASCA’s Annual Meeting that CASCA is holding online this week. Dr. Venn is one of three Canadian TMT Board Members and a member of the CASCA/ACURA TMT Advisory Committee (CATAC).

Many of us also saw a screenshot of Dr. Venn’s presentation slide shared by Dr. Bryan Gaensler on Twitter. Dr. Gaensler is CASCA’s co-chair of its Long Range Plan 2020 Panel.

Also conveyed in the screenshot shared by Dr. Gaensler of Dr. Venn’s presentation was the following:

“As excited as we are about the scientific potential and engineering excellence of the TMT, we believe that astronomical discovery cannot come at the expense of human rights for the people on whose lands we operate our telescopes — anywhere in the world. This position is consistent with CASCA’s Long Range

In 2019, in response to hundreds of kia'i peacefully assembling to oppose the construction of the TMT, police showed up in force in full riot gear. Photo: Hawai'i Tribune Herald

“Unless the TMT project has consent from the Native Hawaiians, Canada’s astronomical community

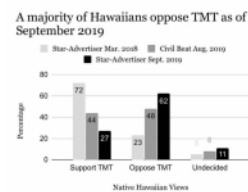
Plan 2020.” Indeed, CASCA’s Long Range Plan (p. 115) notes the following:

“The nature of astronomy is such that sites in isolated or sparsely populated areas often best meet the scientific requirements for experiments and observatories. As a consequence, astronomy has long benefited from building telescopes and other facilities on carefully chosen locations in Canada and throughout the world (e.g., Hawai’i, South Africa, Australia, Chile). However, these same sites often either belong to or have substantial cultural, environmental or economic significance to Indigenous Peoples, traditional title holders or other long standing local communities.

“There have been many instances when astronomy projects have gone ahead over the objections of Indigenous Peoples, or where commitments or promises made by astronomers to local communities have not been fully met. Looking to the future, Canadian astronomers must ensure that their ethics and values apply to the interactions with society that result from the creation and operation of astronomical facilities. The astronomy community must consequently engage meaningfully and

cannot support its construction on Maunakea.”

– Dr. Kim Venn, TMT board member, and a member of the CASCA/ACURA TMT Advisory Committee (CATAC)



TMT proponents often like to cite poll data showing support for the project. However, poll data from the Star Advertiser and the Civil Beat over a

sincerely with Indigenous and local communities as soon as potential projects are conceived, should seek consent from those who would be affected before proceeding with a project, and must sustain engagement and consent throughout the lifetime of projects that go forward.”

As a result, the CASCA Long Range Plan (p. 16) offers this conclusion:

“We recommend that the Canadian astronomical community (e.g., ACURA, CASCA and NRC-HAA) work together with Indigenous representatives and other relevant communities to develop and adopt a set of comprehensive guiding principles for the locations of astronomy facilities and associated infrastructure in which Canada participates. These principles should be centred on consent from the Indigenous Peoples and traditional title holders who would be affected by any astronomy project. In addition, when such consent does not exist, the principles should recognize that the use or threat of force is an unacceptable avenue for developing or accessing an astronomical site. The principles should also acknowledge that

period of two years actually shows eroding support, and in the case of Native Hawaiians, outright opposition.

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Commending CASCA's decision NOT to support TMT without Native Hawaiian Consent - Kanaeokana

ongoing consent from Indigenous Peoples and continuing consultation with all relevant local communities are both essential throughout a project's lifetime. These principles should be developed as soon as possible, and then applied to all future Canadian participation in new or existing astronomical programs, projects and national and international facilities. Engagement and implementation should be consistent with the spirit of the Calls to Action of the Truth and Reconciliation Commission of Canada and of the United Nations Declaration on the Rights of Indigenous Peoples.”

We commend CASCA and its members who are affirming that absent consent of Native Hawaiians, the TMT cannot be built and that the use or threat of violence is not an acceptable course of action to access astronomical sites.

Links:

- CASCA website: <https://casca.ca/>
- TMT Board Members: <https://www.tmt.org/page/governance>
- CASCA's Long Range Plan: [https://casca.ca/wp-](https://casca.ca/wp-content/uploads/2021/04/20UOT001_CASCA_LRP_EN_vFA2.0.pdf)

[content/uploads/2021/04/20UOT001_CASCA_LRP_EN_vFA2.0.pdf](https://casca.ca/wp-content/uploads/2021/04/20UOT001_CASCA_LRP_EN_vFA2.0.pdf)

<https://kanaeokana.net/noconsent>

Exhibit A Mauna Kea Hui's Motion

5/7

5/21/2021

Commending CASCA's decision NOT to support TMT without Native Hawaiian Consent - Kanaeokana

- Truth and Reconciliation Commission of Canada: <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525>
- Truth and Reconciliation Commission of Canada, Calls to Action: http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf
- United Nations Declaration on the Rights of Indigenous Peoples: <https://undocs.org/A/RES/61/295>



04:00



No ku'u lāhui e hā'awi pau a i ola mau. Video: Mikey Inouye

<https://kanaeokana.net/noconsent>

6/7

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of:)
 A Contested Case Hearing Re: Conservation District) CERTIFICATE OF SERVICE
 Use Permit (CDUP) HA-3568)

CERTIFICATE OF SERVICE

We hereby certify that a copy of the foregoing was served on the following via email unless otherwise specified below:

Bin C. Li,
 1151 Punchbowl, Room 131
 Honolulu, HI 96813
 bin.c.li@hawaii.gov
 DLNR.CO.APO@hawaii.gov
 (original+ digital copy)

Watanabe lng LLP
 rshinyama@wik.com
 douging@wik.com
 Counsel for TMT International
 Observatory, LLC

Maelani Lee
 maelanilee@yahoo.com

Lanny Alan Sinkin
 lanny.sinkin@gmail.com
 The Temple of Lono

Linda Chow
 Julie China, Deputies Attorney General
 Linda.L.Chow@hawaii.gov
 julie.h.china@hawaii.gov
 Counsel for the Bd of Land & Natural Res.

Harry Fergerstrom
 hankhawaiian@yahoo.com

Kalikolehua Kanaele
 akulele@yahoo.com

Richard L DeLeon
 kekaukike@msn.com

Stephanie-Malia:Tabbada
 s.tabbada@hawaiiantel.net

Carlsmith Ball LLP
 isandison@carlsmith.com
 Counsel for University of Hawai'i at Hilo

Mehana Kihoi
 uhiwai@live.com

Tiffnie Kakalia
 tiffniekakalia@gmail.com

J. Leina'ala Sleightholm
 leina.ala.s808@gmail.com

C. M. Kaho'okahi Kanuha
 kahookahi@gmail.com

Glen Kila
 makakila@gmail.com

Torkildson, Katz, Moore, & Harris
 lsa@torkildson.com
 njc@torkildson.com
 Counsel for Perpetuating Unique
 Educational Opportunities (PUEO)

Joseph Kualii Lindsey Camara
 kualiiic@hotmail.com

Dwight J. Vicente
 dwightjvicente@gmail.com

Cindy Freitas
 hanahanai@hawaii.rr.com

Brannon Kamahana Kealoha
 brannonk@hawaii.edu

William Freitas
 pohaku7@yahoo.com

DATED: Honolulu, Hawai'i

May 24, 2021

/s/ Richard Naiwieha Wurdeman

RICHARD NAIWIEHA WURDEMAN
 ATTORNEY AT LAW, A LAW CORPORATION

Bianca Isaki

LAW OFFICE OF BIANCA ISAKI
 BIANCA ISAKI
 Attorneys for the Mauna Kea Hui

UHH has complied with Condition No. 4 of the CDUP. The parties named in the Certificate of Service of Petitioners' Motion are invited to file any briefing in response to the Petitioners' Motion within fifteen (15) days of service of this Minute Order. Petitioners may file a reply in support of their Motion within ten (10) days of service of any briefings in response. The Board will consider the arguments raised in the Motion, response, and reply without a hearing.

All documents filed in this case shall use the caption above. All documents shall be filed with Michael Cain, Custodian of Records, by sending an electronic copy (PDF) to Michael.cain@hawaii.gov. Documents sent after 4:30 p.m. shall be treated as filed the following business day. An electronic copy (PDF) of the filing shall be sent to the parties and to the Deputy Attorneys General advising the Hearings Officer and the Board at linda.l.chow@hawaii.gov and lauren.k.chun@hawaii.gov. Orders shall be served on the parties by email.

DATED: Honolulu, Hawaii, Oct 20, 2021.

Suzanne D. Case

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

Christopher Yuen

CHRISTOPHER YUEN, Board Member

DOREEN NĀPUA CANTO, Board Member

Samuel "OHU" Gon III

THOMAS OI, Board Member

SAMUEL "OHU" GON III, Board Member

Vernon Char

VERNON CHAR, Board Member

WESLEY "KAIWI" TOON, Board Member

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DATED: Honolulu, Hawaii, _____.

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


CHRISTOPHER YUEN, Board Member

DOREEN NĀPUA CANTO, Board Member

THOMAS OI, Board Member

SAMUEL "OHU" GON III, Board Member

VERNON CHAR, Board Member



WESLEY KAIWI NUI YOON, Board
Member

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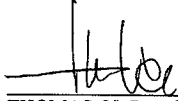
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DATED: Honolulu, Hawaii, _____.

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

CHRISTOPHER YUEN, Board Member

DOREEN NĀPUA CANTO, Board Member



THOMAS OI, Board Member

SAMUEL "OHU" GON III, Board Member

VERNON CHAR, Board Member

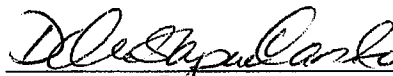
WESLEY "KAIWI" TOON, Board Member

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DATED: Honolulu, Hawaii, _____.

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



DOREEN NĀPUA CANTO, Board Member

CHRISTOPHER YUEN, Board Member

THOMAS OI, Board Member

SAMUEL "OHU" GON III, Board Member

VERNON CHAR, Board Member

WESLEY "KAIWI" TOON, Board Member

EXHIBIT “A”

RICHARD NAIWIEHA WURDEMAN 6015-0
Attorney at Law, A Law Corporation
Pauahi Tower, Suite 720
1003 Bishop Street
Honolulu, Hawai'i 96813
(808) 536-0634
RNWurdeman@RNWLaw.com

LAW OFFICE OF BIANCA ISAKI
Bianca K. Isaki 9977
1720 Huna Street, 401B
Honolulu, Hawai'i 96837
(808) 927-5606
bianca.isaki@gmail.com

Attorneys for the Mauna Kea Hui
MAUNA KEA ANAINA HOU, KEALOHA PISCIOTTA;
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 REOPEN
District Use Permit (CDUP) HA-3568 for the	)	HEARING TO HEAR MOTION TO CONFIRM
Thirty Meter Telescope at the Mauna Kea	)	NON-COMPLIANCE WITH CONDITION NO. 4,
Science Reserve, Kaohe Mauka, Hamakua	)	OR, ALTERNATIVELY, PETITION FOR
District, Island of Hawai'i, TMK (3) 4-4-	)	DECLARATORY ORDERS CONCERNING THE
015:009	)	SAME; MEMORANDUM IN SUPPORT OF
	)	MOTION; DECLARATION OF CLARENCE
	)	KUKAUAKAHI CHING; EXHIBITS "01"- "07";
	)	CERTIFICATE OF SERVICE
)	

MAUNA KEA HUI'S MOTION TO REOPEN HEARING TO HEAR MOTION TO CONFIRM NON-COMPLIANCE WITH CONDITION NO. 4, OR, ALTERNATIVELY, FOR DECLARATORY ORDERS CONCERNING THE SAME

MAUNA KEA ANAINA HOU, an unincorporated association, KEALOHA PISCIOTTA;
CLARENCE KUKAUAKAHI CHING; DEBORAH J. WARD; PAUL K. NEVES; and KAHEA: THE
HAWAIIAN ENVIRONMENTAL ALLIANCE, a domestic non-profit corporation ("Mauna Kea Hui")

respectfully submit this motion to reopen contested case proceedings for the limited purpose of hearing a motion to confirm Permittee UNIVERSITY OF HAWAI‘I HILO’s (UHH) has not complied with Condition No. 4 of Conservation District Use Permit (CDUP) HA-3568 (Condition No. 4) in the above captioned proceedings. In the alternative, this submission may be construed as a petition for declaratory orders also concerning UHH’s present non-compliance with Condition No. 4 to the extent that such relief would be forthcoming under the alternative procedure. Reopening the contested case hearing is appropriate in light of the reasons UHH is unable to comply with permit conditions and has incorrectly represented to Department administrators that it has so complied. Due process requires the Board to allow all parties to present evidence prior to making a discretionary decision on whether UHH’s actions merit extension of deadlines.

This motion is submitted pursuant to Hawai‘i Revised Statutes §§ 91-8, 91-9, 91-10, and 91-13.5; and Hawai‘i Administrative Rules §§ 13-1-11, -12(d), -27, -34; -5-43.

DATED: Honolulu, Hawai‘i

May 24, 2021

RICHARD NAIWIEHA WURDEMAN
ATTORNEY AT LAW, A LAW CORPORATION

Bianca Isaki

LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI
Attorneys for Petitioners

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 Use Permit (CDUP) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Kahohe Mauka, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009)
)
)
)

MEMORANDUM IN SUPPORT OF MOTION

MAUNA KEA ANAINA HOU, an unincorporated association, KEALOHA PISCIOTTA; CLARENCE KUKAUAKAHI CHING; DEBORAH J. WARD; PAUL K. NEVES; and KAHEA: THE HAWAIIAN ENVIRONMENTAL ALLIANCE, a domestic non-profit corporation (“Mauna Kea Hui”) respectfully submit this motion to reopen contested case proceedings for the limited purpose of hearing and deciding a motion to confirm Permittee UNIVERSITY OF HAWAII’I HILO’s (UHH) has not complied with Condition No. 4 of Conservation District Use Permit (CDUP) HA-3568 (Condition No. 4) in the above captioned proceedings. In the alternative, this submission may be construed as a petition for declaratory orders also concerning UHH’s present non-compliance with Condition No. 4 to the extent that such relief would be forthcoming under the alternative procedure. Reopening the contested case hearing is appropriate in light of the reasons UHH is unable to comply with permit conditions and has incorrectly represented to Department administrators that it has so complied. Due process requires the Board to allow all parties to present evidence prior to making a discretionary decision on whether UHH’s actions merit extension of deadlines.

I. Background

On September 27, 2017, the Board approved the UHH permit when it issued Findings of Fact, Conclusions of Law, and a Decision and Order in the above-captioned proceedings (2017 Board Order). The UHH permit was thus subject to Standard Condition No. 4, which states:¹

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.

¹ Standard Condition No. 4 is required under OCCL rules. HAR §13-5-42(a)(8).

By letter received July 30, 2019, UHH requested a two year extension of time to comply with Standard Condition No. 4 of the permit. Declaration of Clarence Kukauakahi Ching (Ching Decl.) ¶2, Exh. 01. In its request, UHH cited June 25, 2019 testing of GPS equipment and partial survey of the Submillimeter Array access road and July 12, 2019 survey of underground fiber optic and electrical lines as evidence that it had initiated construction in addition to its two-year extension request. Exh. 01 at 4.

By letter dated July 30, 2019, Suzanne Case, chair of the Board, wrote to UHH, recognizing the June 25, 2019 and July 12, 2019 actions and that UHH was unable to move its construction equipment to the project site on July 15, 2019. Ching Decl. ¶2; Exh. 02 at 1-2. Under these facts, the Board chair determined UHH “made a good faith effort to comply with the deadlines contained in the permit” and granted the extension to September 26, 2021 without a hearing.

By letter dated April 28, 2021, UHH wrote to the Administrator of the Office of Conservation and Coastal Lands (OCCL) to notify him of “initiation of work and/ or construction” for the TMT in compliance with General Condition No. 4. Ching Decl. ¶3; Exh. 03. In support of their assertion that construction had initiated, UHH cited activities taking place between June 20, 2019 and July 16, 2019, prior to the Board Chair’s July 30, 2019 letter granting UHH’s extension request. Exh. 03 at 2. In addition to the June 25, 2019 and July 12, 2019 actions, UHH cited inspections for invasive species on July 15, 2019, a “Kick-Off Meeting” between TMT and its contractors to discuss construction on July 8, 2019, and removal of an ahu on June 20, 2019. *Id.*

The April 28, 2021 letter posted to the DLNR website has a stamp stating “approved”, signed by Suzanne Case and dated May 4, 2021. Exh. 03 at 3.

II. Mauna Kea Hui is a party to proceedings on the UHH permit.

CDUP No. HA-3568 permits UHH to allow the Thirty-Meter Telescope International Observatory (TMT) to construct the largest telescope in the world and the tallest building on the island in the fragile ecosystem and highly sacred grounds of the summit of Mauna Kea. Parties have constitutional rights under articles XI, §9 and XII, §7 to a clean and healthful environment and to protections for their traditional and customary practices as has been recognized in several Hawai‘i Supreme Court opinions concerning this permit. *In re Conservation District Use Application HA-3568*, 143 Hawai‘i 379, 431 P.3d 752 (2018); *Mauna Kea Anaina Hou v. Board of Land & Natural Resources*, 136 Hawai‘i 376, 363 P.3d 224 (2015). Mauna Kea Hui members are parties to this contested case, through which they seek to protect their rights.

III. Mauna Kea Hui’s positions and supporting authorities.

Mauna Kea Hui’s positions are: (1) DLNR incorrectly approved UHH’s claims to have initiated

work on the land or TMT construction; (2) the DLNR chairperson's summary approval of UHH's request prejudiced the due process rights of the Mauna Kea Hui because the reasons UHH cannot comply with Condition No. 4 require full examination by the Board, at which time the Board should reconsider its initial grant of the permit in 2017; (3) UHH's letter to OCCL constituted an improper request for a determination of conditions exercised under an unlawful rule; and, (4) UHH failed to provide supportive documentation for its claim to have initiated work on the land or construction of the TMT.

A. DLNR incorrectly approved UHH initiation of work on the land or TMT construction.

Extensions of time to initiate UHH's project were require to be "based on supportive documentation from the applicant." HAR §13-5-43(b). Documents submitted by UHH consisted in a three page letter that rather established UHH previously conceded its actions did not constitute initiation of work on the land or TMT construction and constituted unpermitted removal of structures in the conservation district. Exh. 03. UHH's submissions are deficient to meet requirements of the rule and the DLNR chairperson clearly exceeded her authority in approving UHH's request. *Id.* at 3.

1. *DLNR chair is estopped from asserting actions constituting good cause to extend time to comply with Condition No. 4 also constitute compliance with Condition No. 4.*

UHH's "notice of initiation of work and/or construction" apparently sought approval from DLNR staff for their interpretation of 2019 actions as "work done or construction to be done on the land" in compliance with Condition No. 4. Exh. 03 at 1. DLNR's chair approved the same a day after receipt. *Id.* at 3. Previously by letter dated July 30, 2019, DLNR's chair, then signing as, chair of the Board, recognized substantially the same June 25, 2019 and July 12, 2019 actions as good cause for the first extension of the permit as those UHH again cited in its May 3, 2021 letter as reasons that it had complied with Condition No. 4. *Compare* Exh. 02 at 1-2 *and* Exh. 03 at 1-2. That is, the DLNR chair's previous determination that 2019 actions constituted good cause for an extension to September 26, 2021 to initiate construction cannot also constitute initiation of construction under the doctrine of judicial estoppel. *See Rosa v. CWJ Contractors, Ltd.*, 4 Haw. App. 210, 218, 664 P.2d 745, 751 (1983) ("[a] party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by him, at least where he had, or was chargeable with, full knowledge of the facts, and another will be prejudiced by his action.") (quoting 28 Am. Jur.2d Estoppel and Waiver § 68, at 694-95 (1966)).

DLNR's July 30, 2019 approval letter request for extension took the position that UHH's testing of GPS equipment, partial survey of the Submillimeter Array access road, and survey of underground fiber

optic and electrical lines did not constitute work or construction on the land, but rather were good cause to extend the time for compliance. Exh. 01. DLNR cannot recognize the same actions as both reasons to extend time for Condition No. 4 compliance and also, nearing the expiry of that extension, as evidence of Condition No. 4 compliance. Doing so clearly exceeds the bounds of reason and violates principles of judicial estoppel.

2. *No construction or work on land was initiated under the plain and ordinary meaning of the terms.*

UHH has not initiated work “on the land” or TMT construction under the plain, ordinary meaning of the terms “work . . . on the land” or “construction to be done[.]” HAR §13-5-42(a)(8) (“Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed[.]”).

“To effectuate a statute's plain language, its words must be taken in their ordinary and familiar signification, and regard is to be had to their general and popular use. In conducting a plain meaning analysis, [a] court may resort to legal or other well accepted dictionaries as one way to determine the ordinary meaning of certain terms not statutorily defined.” *Wells Fargo Bank, N.A. v. Omiya*, 142 Hawai'i 439, 449-50, 420 P.3d 370, 380-81 (2018). “Construction” is defined to mean the “building of something, typically a large structure.” Lexico.com by *Oxford English Dictionary* (accessed May 20, 2021). Read *in pari materia*, the term “work . . . on the land” did not mean, for instance, sitting on the parcel and working on a laptop, but rather ground-disturbing work associated with the building of the TMT. *Wells Fargo*, 142 Hawai'i at 450, 420 P.3d at 381 (“laws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called upon in aid to explain what is doubtful in another.”).

Activities UHH claim occurred as “work on land” or “construction” are so far outside of commonly understood definitions as to constitute a de facto revision of permit conditions that is outside of the DLNR chair’s authority and is not permitted under any rule. UHH April 28, 2021 letter additionally listed inspections for invasive species, meeting with contractors, and removal of an ahu, which also do not constitute initiation of construction. Inspections of vehicles for compliance with invasive species requirements are not “work on the land” and do not construct the TMT. Nor do “discussions” with contractors. All actions alleged to constitute compliance with Condition No. 4 took place prior to UHH’s July 30, 2019 request for extension.

3. *Unpermitted destruction of the ahu supports the need for Board review of its permit approval.*

To the extent UHH's destruction of an "unpermitted" ahu occurred on the TMT site, UHH failed to obtain a permit for this purpose. Permits are required for "land use", which is defined to include: "grading, **removing**, harvesting, dredging, mining, or extraction of any material or natural resource on land" and the "construction, reconstruction, **demolition**, or alteration of any structure, building, or facility on land." HAR §13-5-2 (emphasis added). UHH's alleged unpermitted removal of an ahu did not constitute construction of the TMT and supports the need for further Board oversight.

In any case, UHH's action is more so evidence of its continued inability to initiate construction of the TMT than of having initiated construction or work on the land. Construction of ahu, including and especially those that are unpermitted, are evidence of ongoing and vibrant traditional and cultural practices that have not been adequately addressed or protected under the current permit. Ching Decl. ¶9. That is, the thriving of Hawaiian cultural practice has given rise to expanded awareness and activity on Mauna Kea that includes constructing ahu and protection of these lands as part of a sacred trust. *Id.* ¶10. Additionally, many traditional and customary practitioners either do not recognize permit requirements for their religious practices or lack the ability to obtain special use permits or conservation district use permits for land uses under HAR §13-5-2. *Id.* ¶11. UHH does not reasonably rely on an unreasonable regulation of Kānaka Maoli traditional and customary practices as evidence of its compliance with Condition No. 4.

B. DLNR's summary and unlawful approval of "initiated" construction prejudiced Mauna Kea Hui due process rights to enforcement of permit conditions.

Mauna Kea Hui's rights and interests in the enforcement and proper interpretation of Condition No. 4 as parties to the contested case that resulted in the 2017 Board Order. The Board's 2017 Order represented that permit conditions, including Condition No. 4 would render the TMT project compliant with applicable laws. 2017 Order (FOFs ¶¶131, 156, 441-43, 454, 490, 931; COLs ¶¶133-35, 247, 509). For instance, this Board concluded:

By following the applicable provisions of the various relevant plans, sub-plans, and permit conditions, UH Hilo and the TIO will conserve, protect, and preserve the important natural and cultural resources of the State, will promote the long-term sustainability of those resources, and will promote the health, safety, and welfare of the public.

COL ¶134. UHH's noncompliance with Condition No. 4 undermines the Board's conclusion as to the conservation, protection, and preservation of important natural and cultural resources, amongst other things. The purpose of time limits on conservation district use permits, including UHH's permit, is to allow the Board to revisit applicants' representations of its projects and any changed conditions or

unexpected circumstances. UHH's concession that it has not been able to construct the TMT requires the Board to re-examine the permit.

Changed conditions and unexpected circumstances exist in regard to UHH's permit. The fact of the many thousands of people seeking to express their opposition to further construction on Mauna Kea in 2019 was not before the Board when it issued its 2017 Order. Ching Decl. ¶12. During the 2021 legislative session, the House of Representatives assembled a working group to revisit the propriety of UHH's management of Mauna Kea under House Resolution No. 33. *Id.* ¶13.

Further, project proponents apparently lack at least \$1 billion in funding to construct the TMT and have sought to make up their shortfall through public funding, specifically from the National Science Foundation (NSF). Ching Decl. ¶¶5-6, 14, Exh. 05, 06. Even if NSF provides funding, the TMT would have to conduct federal permitting processes - such as National Environmental Policy Act environmental review and National Historic Preservation Act section 106 consultation - that could span several years. *Id.*

More recently, the Canadian Astronomical Association (CASCA) issued the following statement: "Unless the TMT project has consent from the Native Hawaiians, Canada's astronomical community cannot support its construction on Maunakea." Ching Decl. ¶¶8, Exh. 07. The present potential loss of support from the Canadian partner in the project pivots on TMT project proponents' failure to have sought and obtained consent. *Id.* ¶15. In December 2020, DLNR presented an "Independent Evaluation of the Implementation of the Mauna Kea Comprehensive Plan" that found the University's management entity had not implemented the plan in three areas, including consultation, education, and outreach to the community and Hawaiian cultural practitioners in particular. *Id.* ¶¶7, 16, Exh. 06.

The reasons UHH cannot comply with Condition No. 4 require full examination by the Board, at which time the Board should reconsider its initial grant of the permit in 2017. The DLNR chairperson's summary approval of UHH's request prejudiced the due process rights of the Mauna Kea Hui to raise these issues before the Board as part of this contested case, or alternatively through Board action on a second request for extension of time to comply. HAR §13-5-43(b) ("[t]ime extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant.").

C. No rule permits DLNR's approval of UHH's notice of initiation.

UHH's "notice of initiation" sought to short-cut processes for determining the constitution of "work and/or construction on the land", which would otherwise require filing of a petition for declaratory orders, and further to evade requirements that the Board review extensions beyond the first request. HAR

§13-5-43(b). As set forth *supra* Part II.A-B, DLNR lacked authority to issue a de facto revision of permit conditions by “approv[ing]” UHH’s notice of initiation. Under HRS §91-1, a “rule” is defined as:

each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda.

Id. DLNR’s revision of Condition No. 4 constitutes an “agency statement of general or particular applicability and future effect” that implemented the prescribed conditions that are enforceable at law and thus constitutes a “rule” under HRS § 91-1. Agencies are required to promulgate such rules through procedures set forth under HRS §91-3.

Rulemaking is “not a matter of agency discretion . . . every agency action is ‘a recognizable rule or an order’ under the [Florida Administrative Procedures Act] or is ‘incipiently a rule or order.’” *Fla. Stat. S. Baptist Hosp. of Fla. v. Agency for Health Care Admin.*, 270 So. 3d 488, 503 (Fla. App. 2019) quoting Florida Statutes § 120.54(1) & *Friends of Hatchineha, Inc. v. State, Dep’t of Env’tl. Regulation*, 580 So.2d 267, 271 (Fla. 1st DCA 1991). “[T]he purpose of rule-making is to govern the future conduct of groups and individuals[.]” *Pila’a 400, LLC v. Bd. of Land & Nat. Res.*, 132 Hawai’i 247, 264, 320 P.3d 912, 929 (2014).

Whether or not DLNR has a written description of the DLNR chairperson’s ability to issue condition revisions is of no consequence to whether the chair operated under an unlawful rule. *See Nuuanu Valley Ass’n v. City of Honolulu*, 119 Hawai’i 90, 99-100, 194 P.3d 531, 540-41 (2008) (city’s unwritten policy of refusing to disclose records under circumstances was a rule and not “internal management” because the policy “affects the procedures available to the public, and implements, interprets, or prescribes policy, or describes the procedure or practice requirements of” the city); *Hawai’i Prince Hotel Waikiki Corp. v. City & County of Honolulu*, 89 Hawai’i 381, 393, 974 P.2d 21, 33 (1999) (a city appraiser’s methodology was held “clearly a ‘rule’ within the meaning of HRS § 91-1(4)” because it was based on the appraiser’s interpretation of ordinances and would “undoubtedly affect[] the assessed value of” existing and future properties), *declined to overrule in Alford v. City & County of Honolulu*, 109 Hawai’i 14, 122 P.3d 809 (2005).

The Chair’s summary approval of UHH’s “notice of initiation” operated under an unlawful rule for failure to have been properly promulgated under HRS § 91-3 procedures. The Mauna Kea Hui pray this Board strike the Chair’s approval as having been exercised under unlawful rules. UHH’s de facto request

for revision of permit conditions should be brought before the Board as part of contested case proceedings or, at minimum, through a request for a second time extension to comply with permit conditions.

D. UHH failed to submit supportive documentation establishing it initiated work on the land or construction of the TMT.

Extensions of time to initiate UHH's project were require to be "based on supportive documentation from the applicant." HAR §13-5-43(b). Documents submitted by UHH consisted in a three page letter that rather established UHH previously conceded its actions did not constitute initiation of work on the land or TMT construction and constituted unpermitted removal of structures in the conservation district. Exh. 03. UHH's submissions are deficient to meet requirements of the rule and the DLNR chairperson clearly exceeded her authority in approving UHH's request. *Id.* at 3.

IV. Alternative relief in the form of declaratory orders requested

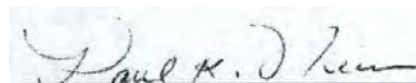
Should the Board seek an alternative ground for granting requested relief, Mauna Kea Hui seeks declaratory orders stating UHH has not initiated construction so as to comply with Condition No. 4. The Board is empowered to grant declaratory orders. HRS §91-8.

The Mauna Kea Hui is represented by co-counsel, whose names, addresses, and telephone numbers are provided above. HAR § 13-1-27(b)(1). Petitioners are parties with legal rights and interests described *supra* Part I, and are submitting this petition to enforce Condition No. 4 of the permit. *Id.*(b)(2).

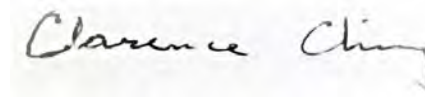
In question are the DLNR chairperson's approval of UHH's April 28, 2021 request for confirmation of its notice of initiation and the application of HAR §13-5-43(b) (time extensions) and HAR §13-5-42(a)(8) (standard conditions), as set forth *supra* Part III; and that the DLNR chair's approval of UHH's request for permit condition revisions constituted a "rule" that is required to be promulgated under procedures set forth by HRS §91-3, as set forth *supra* Part IV. HAR § 13-1-27(b)(3). Parts III and IV *supra* in this memorandum of authorities also set forth Petitioner's positions on the correct interpretation and application of these rules and authorities to the facts before the Board. HAR § 13-1-27(b)(4), (5). Finally, each petitioner's signature is affixed below:



KEALOHA PISCIOTTA, President
MAUNA KEA ANAINA HOU, Petitioner



PAUL NEVES, Petitioner



CLARENCE KŪKAUAKAHI CHING, Petitioner

S. Muneoka

SHELLEY MUNEOKA, Treasurer,
KAHEA: THE HAWAIIAN-ENVIRONMENTAL
ALLIANCE, Petitioner

Deborah J. Ward

DEBORAH J. WARD, Petitioner

V. Conclusion

For the foregoing reasons, the Mauna Kea Hui requests this Board reopen its contested case hearings for the limited purpose of hearing and deciding this motion to confirm UHH's noncompliance with Condition No. 4, or in the alternative, entering declaratory orders confirming the same.

DATED: Honolulu, Hawai'i

May 24, 2021

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

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 CLARENCE
Use Permit (CDUP) HA-3568 for the Thirty Meter	)	KUKAUAKAHI CHING
Telescope at the Mauna Kea Science Reserve, Kaohe)	
Mauka, Hamakua District, Island of Hawai‘i, TMK)	
(3) 4-4-015:009)	
)	

DECLARATION OF CLARENCE KUKAUAKAHI CHING

I, CLARENCE KUKAUAKAHI CHING, declare under penalty of law that the following is true and correct.

1. I am a member of the Mauna Kea Hui, which includes MAUNA KEA ANAINA HOU, KEALOHA PISCIOTTA; CLARENCE KUKAUAKAHI CHING; DEBORAH J. WARD; PAUL K. NEVES; and KAHEA: THE HAWAIIAN-ENVIRONMENTAL ALLIANCE in the above entitled proceedings.

2. Attached as Exhibit “01” is a true and correct copy of the letter from Bonnie Irwin, Chancellor of the University of Hawai‘i at Hilo, to Suzanne Case, Chair of the Board of Land and Natural Resources, dated July 30, 2019, requesting a two year extension of time to comply with Standard Condition No. 4 of the permit, which was obtained from the DLNR Office of Conservation and Coastal Lands (OCCL) online file repository *available at:* https://dlnr.hawaii.gov/occl/files/2019/08/Extension-HA-20-04.pdf?fbclid=IwAR2JXP_ht-juyKcvJLXHMHYGEe2o07r-7Uy_My7INelh_FgHu3BXP41LFiE

3. Attached as Exhibit “02” is a true and correct copy of the letter from Suzanne Case, Chair of the Board of Land and Natural Resources, to Bonnie Irwin, Chancellor of the University of Hawai‘i at Hilo (UHH), dated July 30, 2019, granting the latter’s two year extension of time to comply with Standard Condition No. 4 of the permit, which letter was also obtained from the OCCL online file repository.

4. Attached as Exhibit “03” is a true and correct copy of the letter UHH wrote to the OCCL Administrator to notify him of “initiation of work and/ or construction” for the TMT in compliance with General Condition No. 4, dated April 28, 2021, obtained from the OCCL online file repository *available at:* https://dlnr.hawaii.gov/occl/files/2021/05/3568-TMT-Notice-of-start-of-construction-May-2021.pdf?fbclid=IwAR1pWFJLjbLkguhUfVGmRh_oF98HLMq_OX5bgOTsQSaAuhwb47TBICRnHxg.

5. Attached as Exhibit “04” is a true and correct copy of the National Science Foundation’s

Statement on U.S. Extremely Large Telescope program proposals, published on August 13, 2020 *available at*: https://www.nsf.gov/news/news_summ.jsp?cntn_id=301034

6. Attached as Exhibit “05” is a true and correct copy of the Associated Press news article titled, “Science foundation discusses funding giant Hawaii telescope,” published on August 21, 2020 *available at*: <https://apnews.com/article/technology-hi-state-wire-business-travel-us-news-dafc755bda17dcb5d78f2f7f14b7894c>

7. Attached as Exhibit “06” is a true and correct copy of the December 2020, DLNR “Independent Evaluation of the Implementation of the Mauna Kea Comprehensive Plan” *available at*: <https://dlnr.hawaii.gov/occl/files/2020/12/Kuiwalu-Report.pdf>.

8. Attached as Exhibit “07” is a true and correct copy of “Commending CASCA’s Decision Not to Support TMT Without Native Hawaiian Consent,” (accessed May 19, 2021) *available at*: <https://kanaeokana.net/noconsent>.

9. Construction of ahu, including and especially those that are unpermitted, are evidence of ongoing and vibrant traditional and cultural practices that have not been adequately addressed or protected under the current permit.

10. The thriving of Hawaiian cultural practice has given rise to expanded awareness and activity on Mauna Kea that includes constructing ahu and protection of these lands as part of a sacred trust.

11. Additionally, many traditional and customary practitioners either do not recognize permit requirements for their religious practices or lack the ability to obtain special use permits or conservation district use permits for land uses under HAR §13-5-2.

12. The fact that many thousands of people seeking to express their opposition to further construction on Mauna Kea in 2019 was not before the Board when it issued its 2017 Order.

13. During the 2021 legislative session, the Hawai‘i state House of Representatives assembled a working group to revisit the propriety of UHH’s management of Mauna Kea under House Resolution No. 33.

14. Project proponents apparently lack \$1 billion in funding to construct the TMT and have sought to make up their shortfall through public funding, specifically from the National Science Foundation (NSF). Even if the NSF provides such funding, the TMT would have to conduct federal permitting processes - such as National Environmental Policy Act environmental review and National Historic Preservation Act section 106 consultation - that could span several years.

15. More recently, the Canadian Astronomical Association (CASCA) issued the following

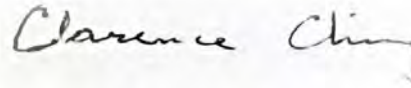
statement: “Unless the TMT project has consent from the Native Hawaiians, Canada’s astronomical community cannot support its construction on Maunakea.” There is now the potential loss of support from the Canadian partner in the project that pivots on TMT project proponents’ failure to have sought and obtained consent.

16. In December 2020, DLNR presented an “Independent Evaluation of the Implementation of the Mauna Kea Comprehensive Plan” that found the University’s management entity had not implemented the plan in three areas, including consultation, education, and outreach to the community and Hawaiian cultural practitioners in particular.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Kamuela, Hawai‘i

May 21, 2021

A handwritten signature in cursive script that reads "Clarence Ching". The signature is written in black ink on a light-colored background.

CLARENCE KUKAUAKAHI CHING
DECLARANT

University of Hawai'i at Hilo Administration
Office of the Chancellor



UNIVERSITY
of HAWAII
HILO

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 9:44
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."

Exhibit B
Minute Order 1

EXHIBIT "01"

200 W. Kāwili St.
Hilo, Hawai'i 96720-4091
Telephone: (808) 932-7348
Fax: (808) 932-7338
hilo.hawaii.edu

An Equal Opportunity/Affirmative Action Institution

Ms. Suzanne Case
 July 30, 2019
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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, 2021.¹ 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.²

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

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

² 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

Ms. Suzanne Case
July 30, 2019
Page 3

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

Ms. Suzanne Case
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Page 4

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

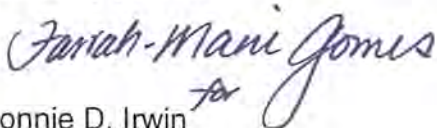
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July 30, 2019
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appellate process that took over a year to conclude and the current demonstrations preventing access to the site, have all substantially delayed TIO's efforts to move its heavy equipment 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 cursive script that reads "Farah-Mani Gomes".

Bonnie D. Irwin ^{for}
Chancellor

c: Office of Maunakea Management
TMT International Observatory LLC

ATTACHMENT 1



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'ohc Mauka, Hamakua, Hawai'i;
TMK (3) 4-4-015:009**

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

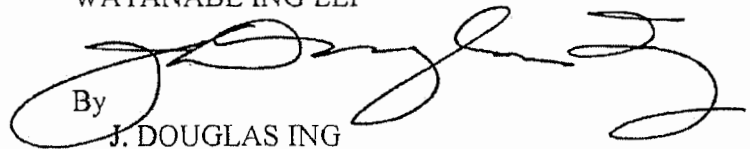
circumstances beyond TIO's control (including a lengthy appellate process and the current situation involving protestors blocking access to the site), TIO's heavy equipment access to the site has been substantially delayed.

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;

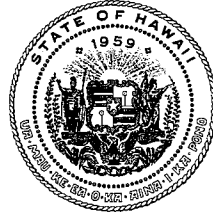
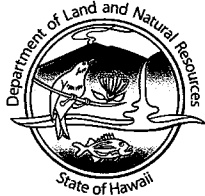
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By  J. DOUGLAS ING

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

731693

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GOVERNOR OF HAWAII



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

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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.

Exhibit B
Minute Order 1

EXHIBIT "02"

- 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
HILO

2021 MAY -3 P 12:19

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

April 28, 2021

Mr. Samuel Lemmo
Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
1151 Punchbowl Street, Room 131
Honolulu, Hawai'i 96813
sam.j.lemmo@hawaii.gov

Subject: Notice of Initiation of Work and/or Construction for the Thirty Meter Telescope Project, CDUP-HA-3568, General Condition No. 4

Dear Mr. Lemmo:

Pursuant to and in compliance with General Condition No. 4 of Conservation District Use Permit ("CDUP") HA-3568, the University of Hawai'i at Hilo ("UH Hilo") hereby notifies the Department of Land and Natural Resources ("DLNR") that (1) work done, and/or (2) construction done on the land (collectively "Project Activity") for the Thirty Meter Telescope Project ("TMT Project") was initiated within two (2) years of the Board of Land and Natural Resources' ("BLNR") approval of CDUP HA-3568. As detailed below, Project Activity was initiated by no later than July 16, 2019.

General Condition No. 4 of CDUP HA-3568 provides:

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.

BLNR approved CDUP HA-3568 on September 28, 2017. 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.”

Subsequent to the issuance of the Notice to Proceed, and before the September 28, 2019 initiation deadline, the following Project Activity was initiated at the TMT Project site or in preparation for Project Activity to be performed at the TMT Project site:

- **June 20, 2019**—Unpermitted ahu removed.
- **June 25, 2019**—Goodfellow Bros, Inc. (“GBI”), the civil contractor for the TMT Project, and M3 Construction Management (“M3”), the construction manager for the TMT Project, 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 on the telescope operations. This was done to confirm on the ground boundaries of the access road and project site;
- **July 8, 2019**—Kick-Off Meeting between TMT International Observatory, LLC (“TIO”), GBI, M3, subcontractors, and others to discuss construction procedures, safety protocols, other requirements, and special concerns;
- **July 12, 2019**—GBI, M3, and SMA representatives located and surveyed the underground fiber optic and electrical lines in preparation of mobilizing the heavy equipment to the TMT project site to mitigate the risk of damaging the SMA fiber optics;
- **July 15, 2019**—The Big Island Invasive Species Committee (“BIISC”) inspected TIO construction equipment and vehicles. BIISC provides invasive species compliance certificates; and
- **July 16, 2019**—TIO attempted to access the TMT Project site. TIO mobilized 18 vehicles and equipment, including a 980 Loader, D6 Dozer, WA320 Loader, and Mini-Ex/Roller. Persons objecting to the TMT Project blocked TIO’s access to the TMT Project site for several months.

The above Project Activity was performed in accordance with DLNR approved construction plans.

Based on the above, UH Hilo reasonably believes and hereby notifies DLNR that Project Activity was initiated by no later than July 16, 2019.¹ Your acknowledgment and concurrence of

¹ By way of correspondence to Chairperson Suzanne Case, dated July 30, 2019, UH Hilo requested an extension of time as to General Condition No. 4. In making the request, UH Hilo stated that “based on information provided by [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

the TMT Project's initiation of Project Activity are respectfully requested. Should you have any questions or require additional information, please contact me at 808-932-7348 or by email at bdirwin@hawaii.edu.



Bonnie D. Irwin, Chancellor
University of Hawai'i at Hilo

cc: Fengchuan Liu, Project Manager (acting), TMT, fliu@tmt.org

APPROVED

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands**

BY: by Leo Tate

DATE: 5/4/2021

REFERENCE NO. _____

that the two year deadline prescribed by General Condition No. 4 has been met." Id. at 2. UH Hilo's extension request was made "[w]ithout waiving the foregoing." Id.

TIO also clearly stated in its July 29, 2019 correspondence to UH Hilo, which was attached as an exhibit to UH Hilo's July 30, 2019 correspondence, that "TIO does not waive, and expressly preserves, its position that work has been initiated in compliance with the deadline in General Condition No. 4." Id.



NSF statement on U.S. Extremely Large Telescope program proposals

August 13, 2020

Due to Privacy Act restrictions, NSF typically cannot identify the organizations or associated details of funding proposals it receives. However, three organizations publicly disclosed their submission of proposals to NSF for planning and design of a U.S. Extremely Large Telescope program. NSF can, therefore, confirm receipt of proposals from the organizations developing the Giant Magellan Telescope (GMT), the Thirty Meter Telescope (TMT), and NSF's NOIRLab (a federally funded research and development center).

NSF understands that potential construction of TMT on Maunakea is a sensitive issue and plans to engage in early and informal outreach efforts with stakeholders, including Native Hawaiians, to listen to and seek an understanding of their viewpoints. If NSF ultimately initiates a formal federal environmental review process, this advance outreach would serve as a precursor to it.

NSF's receipt of a proposal and its initiation of an informal outreach effort are not reflective of NSF's position regarding any project. To request a discussion with NSF related to Maunakea and potential NSF involvement in the TMT project, please contact us by e-mail at: AST-MK@nsf.gov (<mailto:AST-MK@nsf.gov>).

The U.S. National Science Foundation propels the nation forward by advancing fundamental research in all fields of science and engineering. NSF supports research and people by providing facilities, instruments and funding to support their ingenuity and sustain the U.S. as a global leader in research and innovation. With a fiscal year 2021 budget of \$8.5 billion, NSF funds reach all 50 states through grants to nearly 2,000 colleges, universities and institutions. Each year, NSF receives more than 40,000 competitive proposals and makes about 11,000 new awards. Those awards include support for cooperative research with industry, Arctic and Antarctic research and operations, and U.S. participation in international scientific efforts.

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EXHIBIT "04"



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Science foundation discusses funding giant Hawaii telescope

August 21, 2020



HONOLULU (AP) — The National Science Foundation has launched an informal outreach to Hawaii about possible funding efforts for the stalled Thirty Meter Telescope project.

The effort by the nation's top funder of basic research could lead to a huge influx of cash for the astronomy

EXHIBIT "05"

Exhibit B
Minute Order 1

Science foundation discusses funding giant ...

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Thursday.

Funding efforts could also trigger a regulatory process adding two years or more to a construction timeline that is far behind schedule. The project recently announced the start of construction was delayed until spring.

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The foundation said in a statement it plans to reach out to “stakeholders, including Native Hawaiians,” to understand their viewpoints.

Protesters blocked the 6.27-mile (10-kilometer) access road to the summit of Mauna Kea, Hawaii’s tallest mountain, in a demonstration against the project from July through December 2019. Telescope opponents said the project would desecrate land considered sacred by some Native Hawaiians.

The foundation said its outreach would serve as a precursor to a formal federal environmental review process.

The Thirty Meter Telescope project has teamed with the Giant Magellan Telescope planned in Chile and the U.S. National Optical-Infrared Astronomy Research Laboratory to propose the U.S. Extremely Large Telescope Program.

The partnership, which is partly an effort to obtain additional funding, proposes to offer U.S. astronomers complete viewing coverage of the skies in the Northern and Southern hemispheres.

Thirty Meter Telescope officials recently submitted a planning and design proposal to the science foundation aimed at obtaining major funding for \$1 billion added to the project’s cost due to construction delays, inflation and other factors.

Under the proposal, the foundation would contribute \$850 million each to the Thirty Meter Telescope and the Giant Magellan Telescope.

Funding approval would trigger the creation of a federal environmental impact statement and National Historic Preservation Act Section 106 consultation, a process of two years or more.

“It will lead to very significant outreach, another opportunity to listen and learn and a renewed

Science foundation discusses funding giant ...

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Santa Cruz astronomy professor and Thirty Meter Telescope board member, said last month.

Kealoha Pisciotta, leader of the Mauna Kea Hui group that opposes the telescope, said her group and others are prepared to challenge federal environmental documents.

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**INDEPENDENT EVALUATION OF THE
IMPLEMENTATION OF THE MAUNA KEA
COMPREHENSIVE MANAGEMENT PLAN**

**Prepared for
Department of Land and Natural Resources**

**By
Ku'iwalu**

December 2020

EXHIBIT "06"

EXECUTIVE SUMMARY

It has been over ten (10) years since the approval of the Mauna Kea Comprehensive Management Plan (CMP),¹ and the emotions related to Mauna Kea have not diminished but, to the contrary, have intensified and polarized the community. We recognize that the current issues related to Mauna Kea, in particular the construction of the Thirty Meter Telescope (TMT), is a contentious issue. To be very clear, this Report is not for or about TMT. The purpose of this Report is to provide the Department of Land and Natural Resources (DLNR) an independent evaluation of the University of Hawai'i (UH), specifically the Office of Mauna Kea Management's (OMKM), implementation of the CMP management actions contained in Section 7 of the CMP and the public input on how effective UH is managing Mauna Kea. This Report is intended to be a resource to DLNR and the Board of Land and Natural Resources (BLNR) as it reviews UH's current and potential future management of the state conservation lands at Mauna Kea.

Gathering and incorporating public input into the evaluation process was a critical component of this Report. Due to the COVID-19 restrictions, we were challenged with providing an appropriate venue for the public and stakeholders to, (1) get current and accurate information about the management actions (MA) UH is required to implement under the CMP, and (2) provide a transparent and fair opportunity for public input into the UH's implementation of the CMP. We assembled a comprehensive range of tools to provide information and to solicit public input, from email updates, virtual public meetings, dedicated website, and a Facebook page, to small virtual talk story sessions. Throughout the evaluation process, we engaged almost 500 individuals and organizations. We recognize that we may not have heard from everyone, but we believe the range and interests of the participants is reflective of the general public and stakeholders in Mauna Kea.

The Report consists of three assessments. First, OMKM's self-assessment of their implementation of the CMP. Second, the public's assessment, based upon the comments we received. And third, the independent evaluation utilizing the logic model approach that took into consideration UH's self-assessment, the public input, the timeliness of OMKM's implementation of MAs, and whether UH's implementation of the 103 MAs achieved the desired outcomes as set forth in the CMP.

With respect to UH's self-assessment, the *OMKM 2020 Annual Report to the Board of Land and Natural Resources, Status of the Implementation of the Mauna Kea Comprehensive Management Plan* (OMKM 2020 Annual Report to BLNR) essentially concludes that "most management actions have either been

¹ *Mauna Kea Comprehensive Management Plan for the UH Management Areas*, April 2009 (hereinafter CMP), Executive Summary, page v.

implemented or are in progress.” For the most part, the UH Management Entities² believe they have made considerable progress in effectively implementing the CMP MAs and are, in fact, better managing and protecting the cultural and natural resources. However, there is a difference of opinion between UH-Hilo Management Entities (UH-Hilo Entities)³ and the larger UH System with respect to the public’s perception of how effective OMKM is in managing the state conservation lands at Mauna Kea. Accordingly, “in response to past criticisms”⁴ the UH Board of Regents (BOR) adopted Resolution 19-03 to take timely action to comply with the management plans, including cultural education and community outreach, decommissioning, and reorganization and restructuring the UH governance structure in their management of Mauna Kea.

The public’s assessment of how effectively UH has implemented the CMP has primarily varied depending on whether they are in favor or opposition of telescope development on Mauna Kea. Those who support existing and future telescope development on Mauna Kea believe that OMKM has adequately implemented the CMP MAs to preserve and protect the cultural and natural resources on Mauna Kea. For those who do not support continued telescope development on Mauna Kea beyond 2033, the expiration of the existing state lease, they believe that UH continues to mismanage Mauna Kea as concluded in the 1998 State Auditor’s Report. In particular, those in opposition believe that UH continues to advocate telescope development over the protection and preservation of the resources.

Finally, the independent evaluation found that OMKM has made progress in implementing most of the CMP MAs, and in many regards OMKM is effectively managing the activities and uses on Mauna Kea to better protect the natural and cultural resources. We heard many comments that the cultural and natural resources on the state conservation lands on Mauna Kea are some of the best managed and protected lands in the entire State. The area is clear of trash, the invasive species are being removed not only by OMKM but volunteer groups, and the OMKM Rangers to ensure public safety on Mauna Kea.

² “UH Management Entities” include the UH Board of Regents (BOR), UH President, Institute for Astronomy (IfA), Executive Director of Maunakea Stewardship, UH Hilo Chancellor, Mauna Kea Management Board (MKMB), OMKM, Kahu Ku Mauna (KKM) and OMKM Rangers.

³ UH-Hilo Management Entities (UH-Hilo Entities) include UH-Hilo Chancellor, MKMB, OMKM, KKM, and OMKM Rangers.

⁴ UH BOR Resolution 19-03, Adopted November 6, 2019, Amended, July 1, 2020 (BOR Resolution 19-03).

However, the independent evaluation also found that OMKM has not effectively implemented the CMP in three major areas. First, the adoption of the administrative rules was untimely. In 2009, the same year that the CMP was approved, UH obtained legislative authorization to adopt administrative rules to manage the activities on Mauna Kea to ensure the protection of the resources. However, the rules did not become effective until 2020. UH's failure to timely adopt administrative rules has limited their ability to manage public access and regulate commercial activities, essentially hampering their ability to protect the resources and public health and safety on Mauna Kea.

Second, members of the Native Hawaiian community, both those who oppose and support UH's management of Mauna Kea, were not consulted on matters related to cultural and resources issues. The CMP specifically identifies the Native Hawaiian stakeholders to include families with cultural and lineal connections to Mauna Kea, Kūpuna, cultural practitioners, the Office of Hawaiian Affairs and other Native Hawaiian groups. Representatives from these stakeholder groups have consistently commented that they were not consulted by OMKM on cultural issues, including removal of family shrines, stacking of Pōhaku, and identification of cultural sites.

Third, OMKM did not effectively engage with the community, in particular, members of the Native Hawaiian community, on education and outreach efforts, including decision-making process related to the management of Mauna Kea. Many Native Hawaiians on Hawaii Island feel disengaged and disrespected by OMKM. In particular, there is an absence of genuine consultation with the Native Hawaiian community that has resulted in greater mistrust of UH. Even with the Native Hawaiian constituency who strongly support OMKM and telescope development, OMKM has not taken the opportunity to involve them in their community outreach efforts.

Unfortunately, these inadequacies by OMKM have overshadowed their progress in the otherwise effective implementation of many of the CMP MAs.

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ACRONYMS

ACT	Activities and Uses (Comprehensive Management Plan Management Action)
AR	Astronomical Resources (CMP MA)
BLNR	Board of Land and Natural Resources
BOR	Board of Regents
C	Construction Guidelines (CMP MA)
CDUA	Conservation District Use Application
CDUP	Conservation District Use Permit
CIA	Cultural Impact Assessment
CMP	Mauna Kea Comprehensive Management Plan
CR	Cultural Resources (CMP MA)
DHHL	Department of Hawaiian Home Lands, State of Hawai'i
DLNR	Department of Land and Natural Resources, State of Hawai'i
DOCARE	Division of Conservation and Resource Enforcement, DLNR
DOFAW	Division of Forestry and Wildlife, DLNR
EA	Environmental Assessment
EIS	Environmental Impact Statement
EO	Education and Outreach (CMP MA)
FLU	Future Land Use (CMP MA)
HAR	Hawai'i Administrative Rules
HRS	Hawai'i Revised Statutes
IfA	Institute for Astronomy, UH
IM	Infrastructure and Maintenance (CMP MA)
KKM	Kahu Ku Mauna
MA	Management Action
MCP	Management Component Plan
MEU	Monitoring, Evaluation and Updates (CMP MA)
MKMB	Mauna Kea Management Board
MKSS	Mauna Kea Observatories Support Services
NAR	Natural Area Reserve, DLNR
NHO	Native Hawaiian Organization
NR	Natural Resources (CMP MA)
NRHP	National Register of Historic Places
NSF	National Science Foundation
OCCL	Office of Conservation and Coastal Lands, DLNR
OEQC	Office of Environmental Quality Control
OHA	Office of Hawaiian Affairs
OI	Operations and Implementation (CMP MA)
OMKM	Office of Mauna Kea Management, UH
OMMP	Operations, Monitoring, and Maintenance Plan
P	Permitting and Enforcement (CMP MA)
SHPD	State Historic Preservation Division, DLNR
SR	Site Recycling, Decommissioning, Demolition and Restoration (CMP MA)
TCP	Traditional Cultural Property
TMT	Thirty Meter Telescope
UH	University of Hawai'i
UH-Hilo	University of Hawai'i at Hilo

INTRODUCTION

In 1968, BLNR issued a 65-year General Lease No. S-4191 to UH for approximately 11,288 acres of state conservation lands. Of the 11,288 acres, approximately 525 acres is designated as the Astronomy Precinct and the remaining 10,763 acres is designated as Natural and Cultural Preservation Area.⁵ The state lease will expire in 2033. UH has indicated that it intends to seek a new lease with BLNR for the 11,288 acres currently under General Lease No. S-4191 and 19 acres known at Hale Pōhaku under General Lease No. S-5529.⁶

Over ten years ago in 2009, Ku‘iwalu Consulting and its Project Team,⁷ developed the CMP for the UH Management Areas.⁸ The CMP MA related to Monitoring, Evaluation, and Updates MEU-1,⁹ requires UH, through OMKM, to produce annual progress reports describing in detail the management goals, objectives, and actions for the year and what progress was made towards meeting them. In August 2020 we received from UH, the OMKM 2020 Annual Report to BLNR. In addition to annual progress reports, MEU-1 requires OMKM to prepare Five-Year Outcome Analysis Reports that describes the status of the various management programs, progress towards meeting CMP goals, and other relevant information. OMKM is in the process of completing its first five-year review.

Since OMKM will be submitting its first Five-Year Progress Report and UH has announced its intent to file an EIS for a new state lease, DLNR sought an independent evaluation of UH’s current management of Mauna Kea under the CMP. More specifically, DLNR sought an independent evaluation of not only UH’s implementation of the CMP but also UH’s adherence to the CMP and the effectiveness of its management strategies and governance structures in preserving and protecting the valuable cultural and natural resources on the state conservation lands.

⁵ The Astronomy Precinct and Natural and Cultural Preservation Area were designated by UH in its 2000 Mauna Kea Science Reserve Master Plan (Master Plan). The Master Plan called for 525 acres of the summit area leased land to be designated an Astronomy Precinct where the astronomy development was to be consolidated to maintain a close grouping of astronomy facilities, roads, and support infrastructure. CMP page 3-1. The Master Plan was approved by the UH BOR but not adopted or approved by BLNR. CMP page 3-8.

⁶ UH’s notice of intent to file an environmental impact statement (EIS) for the state leased lands was published in the Office of Environmental Quality Control (OEQC) February 23, 2018 Environmental Bulletin.

⁷ The Project Team that developed the CMP consisted of The Edith Kanaka’ole Foundation, Rechtman Consulting, McNeil Wilson, Sustainable Resources Group International, Inc., and Pacific Consulting Services.

⁸ The UH Management Areas is described in Section 3.1.1 of the CMP as beginning “at approximately 9,200 ft. (2,804 m) on Mauna Kea and extends to the summit, at 13,796 ft. (4,205 m), encompassing three distinct areas: the Mauna Kea Science Reserve (Science Reserve), the mid-level facilities at Hale Pōhaku, and the Summit Access Road (see Figure 3-1). These areas are collectively referred to as the ‘UH Management Areas.’ The UH Management Areas on Mauna Kea are classified in the resource subzone of the state conservation district lands (see Section 3.4.2).” See CMP at page 3-16.

⁹ MEU-1 refers to Monitoring, Evaluation and Updates (MEU). See CMP at page 7-64.

DLNR'S INDEPENDENT EVALUATION OF UH'S IMPLEMENTATION OF THE CMP

PURPOSE OF THE INDEPENDENT EVALUATION REPORT

The purpose of *this* Independent Evaluation Report (Report) is to (1) evaluate the effectiveness of UH, specifically OMKM's,¹⁰ implementation of the specific Management Component Plans (MCP) found in Section 7 of the CMP, and (2) to evaluate the efficiency of the governance structure in managing the cultural and natural resources within state conservation lands under lease to UH. Ultimately, this Report will provide DLNR and BLNR the relevant information, including extensive public input, as they consider the management of the state conservation lands during the current lease term and beyond, in any future lease.

INDEPENDENT EVALUATION PROCESS

Fact Gathering

The independent evaluation process focused on OMKM's implementation of the CMP MAs within the MCPs and UH's governance structure in managing Mauna Kea and the Mauna Kea Science Reserve. The Project Team¹¹ gathered relevant information from files of DLNR, UH, various litigation involving Mauna Kea, 1998 state auditor report and follow-up audit reports, relevant print and social media, and other related materials. We also provided UH the opportunity to submit all relevant documents on their implementation of the CMP. In response to the request, UH emailed a comprehensive list of documents and links supporting their implementation of the CMP.¹² All information that was provided to Ku'iwalu was uploaded to the CMP evaluation website, www.evaluatetheCMP.com.

We also reviewed materials related to the implementation of the CMP and Mauna Kea in general, from other stakeholders, including but not limited to the Sierra Club of Hawai'i, Protect Mauna Kea, KAHEA, IfA, 'Imiloa Astronomy Center, Hawai'i Unity & Liberation Institute, Hawai'i Forest & Trails, EnVision Maunakea, Office of Hawaiian Affairs (OHA), Imua TMT, and the TMT International Observatory.

¹⁰ Section 7.4.1 of the CMP states that the OMKM will be responsible for implementing the CMP and ensuring adherence to its provisions. However, for purposes of this Report, since the state lease is issued to UH, the UH will be generally referenced as responsible for the implementation of the CMP unless the action is specifically undertaken by OMKM, then OMKM will be referenced.

¹¹ The Project Team for this Report includes SMS Research, People Strategies Hawai'i LLC, and Ku'iwalu.

¹² Ku'iwalu sent a letter dated May 19, 2020 to Dr. Gregory Chun, UH's Executive Director of Maunakea Stewardship, providing them an "opportunity to furnish Ku'iwalu with all relevant information, which could include reports, studies, annual reports, meeting notes, community comments, administrative rule-making, response to auditor's reports, etc. that document UH's performance, operations, and the management of Mauna Kea consistent with the CMP." Dr. Chun was identified as UH's Point of Contact for the independent evaluation.

Public Engagement Process

As part of the evaluation process, Ku'iwalu proposed to develop and implement a culturally sensitive and robust public engagement process, similar to the community outreach process utilized in the preparation of the CMP that was approved in 2009. At the onset, Ku'iwalu was challenged by the constraints and uncertainties of the COVID-19 restrictions on social distancing and travel to Hawai'i Island. Thus, Ku'iwalu utilized a variety of non-traditional approaches to engage the general public and stakeholders to solicit their input on UH's implementation of the CMP and stewardship of Mauna Kea. The following methods were used to solicit public input: email updates, stakeholder meetings, virtual public meetings, website, Facebook, and direct contact with Ku'iwalu.

Development and Implementation of the Evaluation Model

SMS Research, based upon their experience and expertise, developed and conducted the independent evaluation. To start, they did a thorough review of the CMP and examined all the documents provided during the fact gathering phase. They relied upon the documents provided by UH, including OMKM's 2020 Annual Report to BLNR,¹³ MKMB meeting minutes, reports, studies, and other relevant documents. They also reviewed and considered all documents related to the CMP provided by other organizations, comments from stakeholder and virtual public meetings, website comments, and comments that were submitted directly to Ku'iwalu through phone calls and emails.

SMS Research then developed an evaluation model based upon the Logic Model Approach. This approach focuses on which MAs were completed by OMKM and the impact of those activities or actions on achieving the desired outcomes as set forth in each of the MCPs. The time period examined was UH's implementation of the CMP from 2010 to present.

Final Report

The Report includes three sets of evaluations. First, the Report includes UH's self-assessment based upon the OMKM 2020 Annual Report to BLNR. Second, the Report includes the public's assessment of how effectively UH implemented the CMP MAs, based upon comments from stakeholder meetings, the three virtual public meetings, comments submitted on the website or by email directly to Ku'iwalu. Third, the Report includes the independent evaluation based upon the logic model that took into consideration UH's self-assessment, public input, whether UH's action achieved the desired outcomes, and the timeliness of completion by UH to meet the desired outcomes.

The Report will be submitted to DLNR by December 31, 2020 and uploaded to the CMP website for public consumption.

Exhibit B ¹³ Appendix A7 is a copy of the OMKM 2020 Annual Report to BLNR.
Minute Order 1

MANAGEMENT OF MAUNA KEA

Before delving into the public comment and evaluation model, we believe it is important to have an understanding of the historical background on management of Mauna Kea to provide context for the CMP MAs, MCP desired outcomes, and goals which set the framework for the Logic Model Approach.¹⁴ A brief history timeline of the management of Mauna Kea is shown in Figure 1.

MANAGEMENT OF MAUNA KEA PRIOR TO 1968

In the early 1960's, the federal government, through the National Aeronautics and Space Administration, was increasing funds to test, develop, design, and construct telescope facilities around the country. Due to accessibility, initial testing was conducted at Haleakalā, on Maui Island. In 1963, Governor John Burns provided funds to build an access trail to the summit of Mauna Kea for observatory testing. In 1964, after testing, UH concluded that Mauna Kea was an exceptional site for an astronomical observatory. In that same year, the State Land Use Commission placed the lands on Mauna Kea within the state's conservation district under the management jurisdiction of BLNR.¹⁵

MANAGEMENT OF MAUNA KEA UNDER GENERAL LEASE NO. S-4191

In 1967, UH established the IfA to plan for telescope development on Mauna Kea. The following year, UH applied to BLNR for a 65-year lease of the state conservation lands at Mauna Kea to establish the Mauna Kea Science Reserve. Management of the state leased lands was primarily by IfA to further their mission to conduct and promote world-class astronomical research. From 1968 to 2002, thirteen telescopes were built on the summit of Mauna Kea.

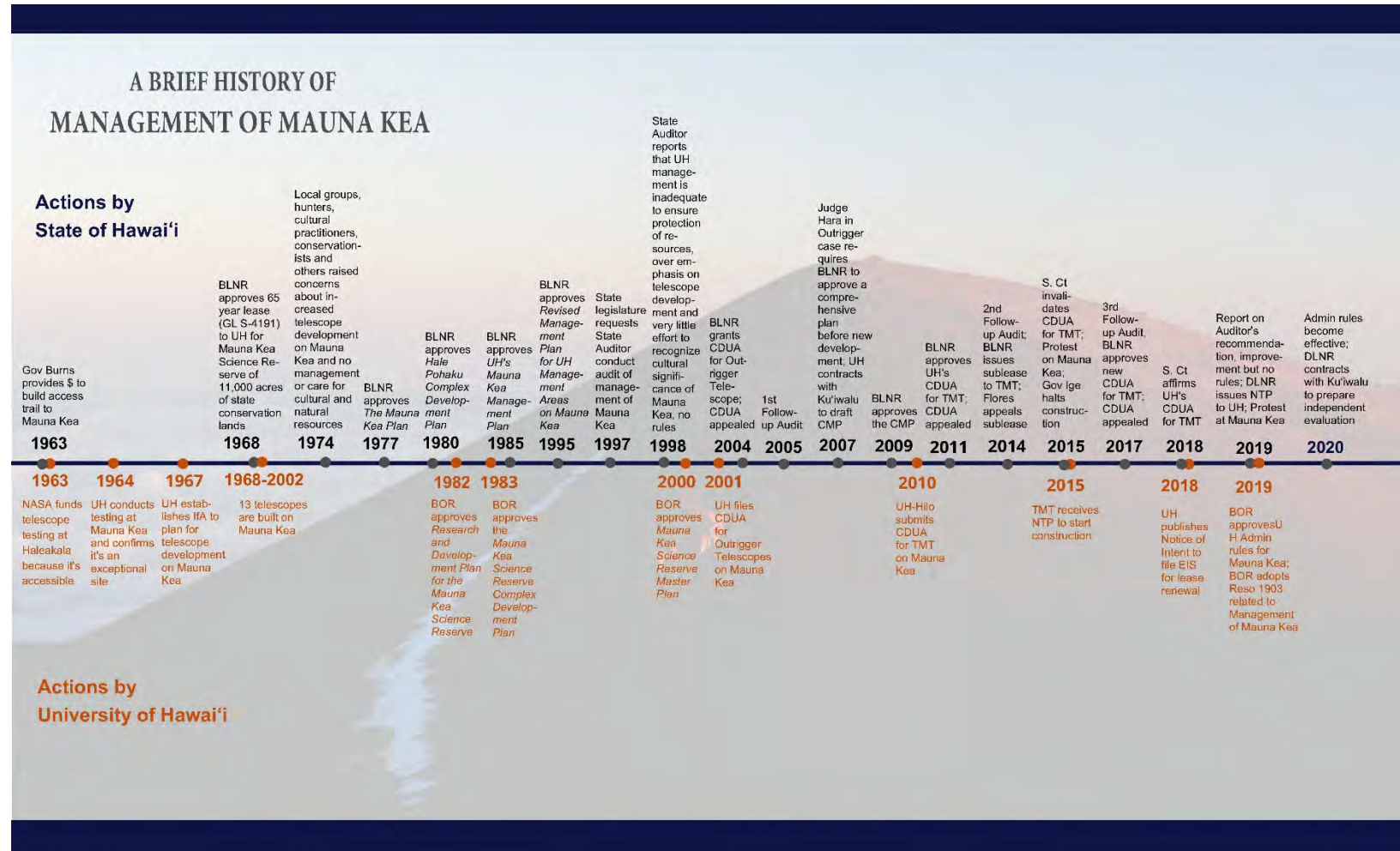
¹⁴ We also recognize that this Report will be broadly reviewed, thus this background information on management of Mauna Kea will provide the relevant context when reviewing the Report.

¹⁵ See CMP Section 3.2, at pages 3-5 for complete History of Planning and Management of Mauna Kea. Additionally, Hawaii Revised Statutes (HRS), Chapter 205-2 describes the state four land use districts; urban, rural, agricultural, and conservation. Conservation districts include areas necessary for protection and preservation of resources.

During this same period of time, local groups, including hunters, cultural practitioners, conservationists, and others raised concerns about the increased development of telescopes on the summit of Mauna Kea with no management or care for the cultural and natural resources.¹⁶ From 1974 to 2000, DLNR and UH attempted to respond to the community concerns to improve management control over not only telescope development, but the proliferation of unregulated commercial and recreational use of Mauna Kea. DLNR adopted the 1977 DLNR Mauna Kea Plan, 1980 Hale Pōhaku Complex Development Plan, 1985 Mauna Kea Management Plan, and 1995 Revised Management Plan for the UH Management Areas on Mauna Kea. Similarly, in 1982 the UH BOR approved the Research and Development Plan for Mauna Kea Science Reserve, in 1983 the Mauna Kea Science Reserve Complex Development Plan, and in 2000 the Mauna Kea Science Reserve Master Plan.

¹⁶ State Auditor's Report *"Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve,"* Report No. 98-6, February 1998, page 45.

Figure 1: Brief History Timeline of Management of Mauna Kea



THE STATE AUDIT OF THE MANAGEMENT OF MAUNA KEA

In response to the “growing concerns” over the protection of Mauna Kea’s cultural and natural resources, the 1997 Hawai’i State Legislature, through Senate Concurrent Resolution No. 109, requested the State Auditor to conduct an audit of the management of Mauna Kea and the Mauna Kea Science Reserve. The audit was completed in February 1998, and specifically noted that the “conditions of the lease, the plan(s) developed, and the Conservation District Use Application (CDUA) process were all designed to allow the university’s use of the lands without causing excessive damage to the fragile environment. However, the university’s focus on pursuing its own interests has led to conditions and practices that have countered or weakened these processes.”¹⁷

The audit indicated that UH primarily focused on development of the summit of Mauna Kea for some of the most powerful astronomical instruments in the world. While these telescopes enhanced the university’s prestige and status around the astronomical community, “both the university and the department¹⁸ failed to develop and implement adequate controls to balance the environmental concerns with astronomy development.”¹⁹

The audit concluded that,

*Over thirty years have passed since construction of the first telescope on Mauna Kea. During this period, little was done to protect its natural resources. The university, as the leaseholder, should have provided sufficient protection to the natural resources and controlled public access and use. These requirements have not been adequately met. The Department of Land and Natural Resources, in its role as landlord, should have overseen the university’s activities and enforced permit conditions and regulations in protecting the State’s interests. Neither state agency has been proactive in maintaining the conservation district.*²⁰

The audit made several recommendations for UH and DLNR to improve the management of Mauna Kea and the Mauna Kea Science Reserve. Since 1998, the state auditor has conducted four follow-up audits to assess UH and DLNR’s implementation of their specific recommendations to improve the management of Mauna Kea and the Mauna Kea Science Reserve. The follow-up audits were done

¹⁷ Id, page 15.

¹⁸ While the 1998 Audit addressed both UH and DLNR’s management of Mauna Kea and the Mauna Kea Science Reserve, for purposes of this Report, we will be focusing only on UH’s management of Mauna Kea under the CMP.

¹⁹ Id, page 15.

²⁰ Id, pages 34-35.

in 2005,²¹ 2014,²² 2017,²³ and 2019.²⁴ In general, the follow-up audits found that UH had made improvements in managing Mauna Kea, including the adoption of the CMP. However, consistent in all the audits, was UH's failure to adopt administrative rules governing public and commercial activities to ensure effective management and enforcement for the protection and preservation of the natural and cultural resources.²⁵

DEVELOPMENT AND MANAGEMENT OF MAUNA KEA UNDER THE CMP

The CMP was developed to address many of the past concerns by providing a resource management framework to preserve and protect cultural and natural resources by managing existing and future activities and uses on Mauna Kea. Some of the past concerns were noted in the 1998 Auditor's Report, including over emphasis on telescope development and lack of acknowledgement of the cultural significance of Mauna Kea. The CMP was also developed to comply with the legislative intent of conservation lands,²⁶ and judicial decisions, including Judge Hara's decision²⁷ and the *Ka Pa'akai*²⁸ analytical framework related to the protection of Native Hawaiian rights.

²¹ *Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*, Report No. 05-13, December 2005.

²² *Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*, Report No. 14-07, August 2014.

²³ *Follow-Up on Recommendations from Report No. 14-07, Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*, Report No. 17-06, July 2017.

²⁴ *Report on the Implementation of State Auditor's Recommendations 2014-2017*, Report No. 19-15, November 2019.

²⁵ UH Administrative Rules, Chapter 20-26 entitled Public and Commercial Activities on Mauna Kea Lands was adopted by the BOR on November 6, 2019, signed by the Governor, and became effective on January 23, 2020.

²⁶ HRS, §183C-1, states that "The legislature finds that lands within the state land use conservation district contain important natural resources essential to the preservation of the State's fragile natural ecosystems and the sustainability of the State's water supply. It is therefore, the intent of the legislature to conserve, protect, and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare."

²⁷ *Mauna Kea Anaina Hou, et al. v. Board of Land and Natural Resources*, Civ. No. 04-1-397, Decision and Order dated January 19, 2007 (Judge Hara's decision). Pursuant to Judge Hara's decision, BLNR shall approve a comprehensive management plan that considers multiple uses as a precondition for any future development on Mauna Kea.

²⁸ *Ka Pa'akai O Ka 'Aina v. Land Use Commission*, 94 Haw. 31, 7 P.3d 1068 (2000) (*Ka Pa'akai*). The Hawai'i Supreme Court in its decision in *Ka Pa'akai* provides government agencies an analytical framework to ensure the protection and preservation of valued cultural, historical, and natural resources. Section 2.3.3 of the CMP specifically describes how the CMP applied the analytical framework to ensure that the constitutionally guaranteed traditional and customary Native Hawaiian rights and cultural, historical, and natural resources are preserved and protected.

In addition to the legal requirements, the CMP was developed based upon an extensive community engagement process. The basis for the consultation process was an acknowledgment by UH that past planning and management efforts had not fully engaged the community or genuinely considered their concerns. The CMP aptly summarizes this sentiment:

During the recent Outrigger Telescope permitting process, many in the Hawaiian community experienced frustration as they attempted to express their perspectives and suffered psychological and spiritual hurt as their values and traditions were not given the attention and respect they deserved. As a result, they lost trust in the University as a responsible steward of the UH Management Areas and criticized the University for circumventing its own management policies. Subsequently, many individuals dissociated themselves from the process or resorted to other venues to express their views and advocate their position.²⁹

The CMP was prepared in a methodical manner, primarily based upon the *Ka Pa‘akai* analytical framework, to form the foundation for the 103 MAs. These MAs are designed to preserve and protect the cultural and natural resources by managing the existing and futures uses and activities on Mauna Kea.

- Section 1 – Cultural Orientation. Introduces the reader or user of the CMP to the cultural significance of Mauna Kea from a historical and contemporary use perspective;³⁰
- Section 2 – Introduction. Describes the CMP as an integrated planning tool for resource management, drawing upon the Hawaiian approach to managing cultural and natural resources as well as contemporary science-based management approaches. This section also describes the CMP goals, objectives, and desired outcomes upon which we evaluate whether UH’s implementation of the CMP is in furtherance of these goals;
- Section 3 – Management Environment. Provides an overview of the physical UH Management Areas, history of the previous planning and management plans, and describes the management responsibilities over Mauna Kea;
- Section 4 – Community Engagement Process. This process recognized that many in the public, especially the Native Hawaiian community on Hawai‘i Island felt anger, hurt and mistrust towards UH for not involving them in management decisions related to Mauna Kea. This section describes the culturally sensitive community engagement process based upon cultural values and the non-traditional methods of engagement to ensure meaningful participation by the public;

²⁹ CMP, page 4-1.

³⁰ We acknowledge that not all Native Hawaiians may share the view that Mauna Kea is culturally significant. During the public engagement process for this Report, there is a strong Native Hawaiian constituency that assert Mauna Kea is not culturally sacred and in fact, the CMP’s assertion that Mauna Kea is culturally significant is offensive to this Native Hawaiian constituency. However, during the community engagement process for the development of the CMP, there was overwhelming sentiment by many of the Native Hawaiian stakeholders that participated in the process, that Mauna Kea is culturally significant.

- Section 5 – Cultural and Natural Resources. The CMP relied upon previous documentation to identify the valued cultural resources,³¹ historic and archaeological resources, and natural resources. Section 5 is the 1st step in the *Ka Pa‘akai* analysis to identify the valued cultural, natural, and historic resources within the state conservation lands;
- Section 6 – Human Environment. This section described all the existing and future activities and uses on Mauna Kea and the threats to the cultural, natural, and historic resources. Section 6 is the 2nd step in the *Ka Pa‘akai* analysis to determine the impacts that the proposed management framework would have on the valued resources;
- Section 7 – Management Component Plans. Section 7 is the 3rd step in the *Ka Pa‘akai* analysis that identifies the feasible actions, MAs, or mitigation measures to reasonably protect the valued cultural, natural, and historic resources. This is the heart of the CMP that sets forth desired outcomes for each of the MCPs, specific MAs that UH, and specifically OMKM, is required to implement to ensure the protection and preservation of the cultural and natural resources.

The CMP was approved by BLNR on April 7, 2009 and the UH BOR on April 16, 2009. As a condition of BLNR approval, four sub-plans were required to be developed within one year of approval of the CMP. The four sub-plans include: (1) *Natural Resource Management Plan for the UH Management Areas on Mauna Kea* (September 2009), (2) *Cultural Resources Management Plan for the UH Management Areas on Mauna Kea* (October 2009), (3) *Mauna Kea Public Access Plan* (January 2010), and (4) *Decommissioning Plan for the Mauna Kea Observatories* (January 2010).

³¹ In particular, the CMP relied upon the extensive ethnographic interviews and cultural reports prepared by Kepa and Onaona Maly. Maly, K and O. Maly (2005). *Mauna Kea, ka piko Kaulana o ka aina: Mauna Kea, the famous summit of the land*. Hilo, HI, Kumu Pono Associates LLC: 650 p.; Maly, K. and O. Maly (2006). *Appendix A: Mauna Kea-Ka Piko Kaulana o Ka ‘Aina*.

PUBLIC ENGAGEMENT PROCESS AND SUMMARY

The public engagement process and summary is a critical component of not only the independent evaluation but the path forward for stewardship of Mauna Kea. When contracting with Ku'iwalu, DLNR emphasized the importance of an extensive public engagement process to fully inform them and BLNR of the public's sentiments about current and future stewardship of Mauna Kea. Public sentiments include stakeholders to Mauna Kea and the general public. Thus, in addition to the technical evaluation of UH's implementation of the CMP, this Report includes the public's assessment of UH's management or stewardship and governance of Mauna Kea.

Almost everyone has an opinion or comment on Mauna Kea. However, not all comments are necessarily related to the implementation of the CMP.³² For the integrity of the independent evaluation, we wanted to ensure that the public assessment and UH's assessment were comparing "apples with apples," in other words, comparing the same CMP MCPs. Thus, while we read all of the comments, for the purposes of the independent evaluation, we considered those comments that were specifically related to UH's implementation of CMP MAs. However, this does not diminish or disregard the time people took to submit their comments or the strong sentiments that were expressed in their comments. For those who submitted comments within the comment deadline, we have listed their names on Appendix A1.³³ We have greatly appreciated all of the comments that were submitted.

STAKEHOLDERS AND GENERAL PUBLIC

Similar to the CMP community engagement process, there are families, organizations, and agencies who have an active (and in some cases, cultural or lineal) relationship to Mauna Kea. There are certain stakeholders whose views and perspectives were given careful consideration because of their cultural, legal, or regulatory affiliation with Mauna Kea. They include the following:

- UH Management Entities
- Families who have cultural or lineal connections to Mauna Kea
- Hawaiian Cultural and Religious Practitioners
- Astronomical Community
- Aha Moku Advisory Committee

³² In fact, many comments we received were either for or against the construction of TMT on Mauna Kea. While this Report is not for or about TMT, Hawaiian sovereignty, ceded lands, compensation, or renewal of the state lease, many of the comments we received were about these topics. This Report briefly describes some of these comments in the Section titled "Issues and Concerns beyond the Scope of this Report."

³³ Appendix A1 is a comprehensive list of all the individuals and groups we engaged with during the CMP evaluation process. This list includes those who may have received email updates, participated in stakeholder meetings, attended virtual public meetings, left a comment on the website, or emailed a comment directly to Ku'iwalu.

- OHA
- Environmental Groups
- Hawaiian Educational and Business Organizations
- Commercial and Recreational users
- Elected Officials
- Government Agencies

In addition to stakeholders, the viewpoints of the general public are important and were given due consideration in the evaluation process.

CONSULTATION PROCESS AND METHODS

As previously noted, Ku'iwalu utilized a variety of non-traditional approaches to engage the general public and stakeholders to solicit their input on UH's implementation of the CMP and stewardship of Mauna Kea. We engaged with nearly 500 individuals or organizations during the evaluation process.³⁴ The following methods were used to solicit public input:

Email Updates

- 1st email – May 15, 2020. Ku'iwalu initially emailed letters to those individuals or groups who were consulted during the preparation of the CMP in 2009. In addition, emails were sent to a list of known stakeholders involved in Mauna Kea at the time. The first email included a letter introducing Ku'iwalu, a copy of DLNR's May 15, 2020 Press Release announcing their review of the Mauna Kea CMP, the CMP Report and CMP Appendices from April 2009. Appendix A2 is a copy of the email, and attachments of Ku'iwalu's Introduction Letter, and DLNR's Press Release;³⁵
- 2nd email – July 23, 2020. The 2nd email update included a letter that announced the launch of the Project Website www.evaluateTheCMP.com and Facebook page (Share Your Mana'o on the Mauna Kea CMP). The letter indicated that the website provides easy access to the CMP, reference documents provided by UH, as well as other resources. It also explained ways to provide comments and give input during the evaluation process. As the process proceeded, the email updates were expanded to include those who participated in stakeholder meetings, those who registered for the virtual public meetings, or those who may have submitted comments. Appendix A2.1 is a copy of the email and the July 23, 2020 letter;

³⁴ See Appendix A1.

³⁵ The April 2009 CMP [Report](#) and CMP [Appendices](#) can be found on DLNR's website.

- 3rd email – August 26, 2020. The 3rd email update announced the three virtual public meetings as well as information of the many different ways to provide comments before the October 16, 2020 comment deadline.³⁶ Appendix A2.2 is a copy of the email;
- 4th email – September 3, 2020. The 4th email update announced the three virtual public meetings and how to register for each meeting. It also provided a link to the website to participate in a number of informal community polls. Appendix A2.3 is a copy of the email sent to the expanded list of stakeholders;
- 5th email – September 24, 2020. The 5th email was a reminder to register in advance for the virtual public meetings. Appendix A4 is a copy of the email reminder.
- 6th email – December 2020. The 6th email will be to announce that the Report has been submitted to DLNR and posted on the website for thirty (30) days, thereafter the website will be removed since the Report has been submitted. DLNR will then provide a link to the Report on its Mauna Kea website. The email will be sent to the comprehensive list referenced in Appendix A1.

Individual and Stakeholder Meetings

Ku'iwalu convened over forty (40) virtual stakeholder meetings and telephone conferences during the course of the evaluation process. The small talk story meetings permitted discussions that could be candid, confidential, and respectful. The meetings ranged from 1-2 hours and focused on getting specific comments on UH's implementation of the CMP MAs and their stewardship of Mauna Kea. These stakeholder meetings ranged from the various UH Management Entities who have a role in the management of Mauna Kea, relevant DLNR Divisions, cultural and religious practitioners, individuals and families who have cultural or lineal connections to Mauna Kea, NHOs, Observatories, Imua TMT, KAHEA, Kia'i Alaka'i and elected officials. Appendix A3 is a list of stakeholders we met with. This list of stakeholders was added to the list for email updates.

Virtual Public Meetings

In an effort to reach out to the broader public, we held three virtual public meetings. The meetings were scheduled on different days of the week and at different times to make them more accessible to the public. Those wanting to attend the virtual meetings were required to register in advance in order to receive a link to attend the meetings. Appendix A4 is a list of those who registered for each of the three virtual public meetings. In general, more people registered than actually joined the meeting.

³⁶ The deadline for comments was extended to November 5, 2020 as posted on the website.

During each of the two-hour virtual public meetings, we provided a brief presentation on the CMP and evaluation process. However, most of the meeting was dedicated to providing the public with an opportunity to give specific comments on UH's implementation of the CMP MAs. Appendix A4 also includes a copy of the meeting agenda, and the power point presentation that was shared at the meeting.

Website

We created a dedicated website as another means to inform, educate, and solicit public input on the independent evaluation, www.evalutetheCMP.com. Not only did the website provide information about the CMP, the evaluation process, and links to an exhaustive listing of resource materials related to Mauna Kea, but one of the primary purposes for the website was to provide the public another platform to submit comments. We received approximately 70 comments through the website. Individuals could leave comments, but their comments could not be viewed by others. Appendix A5 is a copy of some of the information posted on the website. The comments are not included in the Appendix because we did not get permission and most of the comments were not specifically related to the implementation of the CMP.

Facebook

At the time we launched the website, we launched a Facebook page as a social media platform to supplement the website. The Facebook page was an additional way of distributing information and announcements. No public comments were permitted to be posted to the Facebook page, but viewers were directed to the website to leave their comments.

Comments Submitted to Ku'iwalu Related to UH's implementation of the CMP

Besides the methods noted above, some comments were sent directly to Ku'iwalu. For example, we received written comments from the OHA, Imua TMT, Kimo Stone, Mililani Trask on behalf of Wahine Apapalani Hawaiian Cultural Practitioners, Bianca Isaki on behalf of KAHEA, Senator Kurt Fevella, Thayne Currie, Flores-Case 'Ohana, and numerous email form submissions from Mauna 'Aelike/Consensus Building 'Ohana.³⁷

Appendix A6 is a copy of these comments.

³⁷ Appendix A6 includes a copy of Kealoha Pisciotta's comments on behalf of Mauna Kea Anaina Hou, Mauna Kea Hui, Mauna Kea Moku Nui 'Aelike/Consensus Building 'Ohana and a copy of one of the form submissions received via email from Mauna 'Aelike/Consensus Building 'Ohana whose contents are identical to Kealoha Pisciotta's comments. We did not include in Appendix A1 all of the names who submitted Mauna 'Aelike/Consensus Building 'Ohana forms after November 5, 2020, the extended deadline to submit comments as posted on the website.

SUMMARY OF THE COMMENTS RELEVANT TO UH'S IMPLEMENTATION OF THE CMP³⁸

While the next section of the Report will include the public's assessment of UH's implementation of the CMP, this section of the Report will summarize some of the major themes specifically relevant to UH's implementation of the CMP. The Section titled "issues and Comments beyond the Scope of the CMP" will summarize or list some of the comments that are beyond the scope of the implementation of the CMP but should be considered in broader decision making related to Mauna Kea.

The cultural value of Mauna Kea continues to be "unrecognized" by UH as are the rights of Native Hawaiian cultural and religious practitioners

From the building of the initial telescopes in 1968 to the 1998 Auditor's Report, and to the implementation of the CMP, a consistent concern has been that UH has primarily focused on telescope development on Mauna Kea and the cultural value of Mauna Kea has been disregarded or largely unrecognized.³⁹ While we received comments from some Native Hawaiians who assert that Mauna Kea is not sacred, we received many more comments from members of the Native Hawaiian community and the general public that Mauna Kea is culturally significant. We also received specific comments from individuals and families who continue to exercise traditional and customary practices on Mauna Kea that have not been consulted with and felt that their rights have been disregarded or disrespected by OMKM.

For example, there was strong sentiment by Native Hawaiians active in the protest on Mauna Kea that the determination by OMKM as to what cultural resources and historic sites are significant, including the removal of some of those resources is not only inconsistent with the CMP but it also violates their constitutional protections under Article XII, Section 7 of the Hawaii State Constitution. They specifically assert that there has been little or no consultation with known families who have cultural or lineal connections to Mauna Kea, Kūpuna, and cultural and religious practitioners before the removal of these resources. They assert that these actions by OMKM are inconsistent with CMP MA CR-1, CR-4, CR-5, CR-6, CR-7, CR-8, CR-9, and CR-10.

Another example noted in the comments we received was that UH's initial draft of the administrative rules proposed to regulate Native Hawaiian traditional and customary rights while providing exemptions for commercial users. The commenters note that only after vocal opposition to the draft rules, were the final administrative rules revised to provide that "Native Hawaiian traditional and

³⁸ The comments provided during this process shall only be used for this independent evaluation. No permission has either been sought or granted to use the information, comments, or disclosures beyond this Report. No specific comments are attributed to any individual as we did not request nor receive permission to do so.

³⁹ 1998 Audit Report, Summary page.

customary rights as recognized and protected under article XII, section 7, of the Hawai'i State Constitution shall not be abridged."⁴⁰

There is a lack of genuine community engagement and cultural education by UH as required by the CMP.

A consistent comment from outside of UH Management Entities is that there has not been genuine community outreach and cultural education as required by CMP MA EO-1, EO-2, EO-3, and EO-7. Even some UH Management Entities note that this is one area in the CMP that UH could improve on. Comments by UH-Hilo Entities believe that community engagement was primarily through MKMB meetings and UH BOR meetings as these meetings are open to the public. UH-Hilo Entities felt that beyond the MKMB publicly noticed meetings, it was the role of the UH System in Mānoa to manage the communications with the community because UH-Hilo Entities do not have the resources, given that most of them are voluntary boards.

In addition to OMKM's deficiencies noted above, the CMP MA related to Education and Outreach, there were comments that OMKM failed to inform the public of the results of the management activities in a timely manner and failed to timely complete the five-year review as required under CMP MA MEU-1 and MEU-2, respectively.

With respect to cultural consultation, UH-Hilo Entities believe that it is the kuleana of KKM to engage with the Native Hawaiian community because of their cultural experience and expertise. Although KKM meetings are not subject to the sunshine law and therefore not required to be open to the public, KKM is comfortable in making their collective recommendations to OMKM based upon their cultural experience and expertise. Like MKMB, members of KKM commented that they are a voluntary board who are doing the best they can with their limited resources. KKM has provided OMKM recommendations on removal of offerings, scattering of human remains, construction of new cultural features including stacking of rocks, and they review any proposed changes by observatories to their facilities on Mauna Kea. Although most of the UH Management Entities believe they are in compliance with the CMP, the UH BOR has directed the 'Imiloa Astronomy Center to take a more active role in community engagement and cultural education.⁴¹

⁴⁰ Section 20-26-3, Hawaii Administrative Rules (HAR).

⁴¹ University of Hawai'i Board of Regents Resolution 19-03, Adopted November 6, 2019, Amended, July 1, 2020 (BOR Resolution 19-03). BOR Resolution 19-03 specifically determined that there remain unmet responsibilities and ongoing compliance issues that have delayed completion of certain recommendations and requirements under the Management Plans. Action Item No. 5 specifically provides, "In collaboration with OMKM and MKSS, the 'Imiloa Astronomy Center shall develop a suite of educational programs regarding Maunakea including but not limited to Native Hawaiian culture, history, environmental, and biological considerations designed for tour guides and drivers, employees, contractors, recreational users, scientists and observatory workers, and visitors, as required by the Management Plan, by August 31, 2020. OMKM shall report to the Board of Regents on its plans and progress to implement said educational programs at its February 2020 meeting. Administration shall make a budget request during the 2020 legislative session to fund this action item."

UH has generally done a good job in managing the cultural and natural resources, but there is no independent review or accountability on the integrity of the studies or reports, and the completion of many of the CMP actions are overdue.

Most of the comments we heard from government agencies, observatories, commercial and recreational users, and some Native Hawaiians, expressed that the cultural and natural resources are being better managed and protected by OMKM than prior to the 1998 Audit. Many have indicated that the wekiu bug population has increased, the historic sites are being monitored regularly under the archaeological monitoring plan, the OMKM Rangers are doing a great job educating visitors about staying on the trail and picking up their trash, the Mauna Kea silversword population has increased, and the access road is better maintained, especially during the snowy winter season.

On the other hand, we also heard comments that archaeological monitoring plans were long overdue, that the reports indicating the wekiu bug population increase were to support delisting it from the endangered species list, that the archaeological work for the northern plateau was altered to show no cultural sites where TMT is going to be built, and that cultural descendants from the area were never consulted on those reports. These comments are related to MAs NR-1⁴² to NR-18. This independent evaluation did not review the reports or studies referenced by OMKM for accuracy or scientific integrity.

There is an inherent conflict of interest by having UH as the lessee of the state conservation lands and the applicant for new telescope development.

We heard strong comments from members of the Native Hawaiian community that UH's role to advocate for new telescope development as the applicant for the CDUA conflicts with UH's ability to properly manage and protect the valued cultural and natural resources within the state conservation lands. In relevant part, Section 7.3.4 of the CMP related to Future Land Uses specifically emphasized that "the CMP manages resources, it does not advocate or promote new telescope development."

Contrary to the CMP, the dual roles of UH as land manager and as developer creates at least an appearance of a conflict of interest that have caused some Native Hawaiians to question the credibility and integrity of the scientific, historic, cultural, and environmental reports that OMKM produced pursuant to the CMP MAs. Some comments specifically noted that CMP MA FLU-2 required UH to develop land use zones in the Astronomy Precinct and the goal of this process was to refine telescope siting areas defined in the 2000 Master Plan based upon updated cultural and natural resource information. For example, TMT is being proposed to be built in the northern plateau in an area where the 2000 Master Plan

Exhibit B ⁴² NR refers to Natural Resources (NR). See CMP section 7.1.2.
Minute Order 1

says no telescope development. This conflict of interest adds to the diminished trust between UH and many members of the Native Hawaiian community.

We also heard comments from UH-Hilo Entities that it was “awkward” having UH as the applicant for the CDUA for TMT. In fact, they felt their relationship with members of the Native Hawaiian community changed when they became the applicant for the TMT CDUA; they felt they were no longer viewed as being neutral land managers but telescope developers. Beyond the issue of the appearance of a conflict of interest, the UH Management Entities have commented that ideally, they would prefer having a smaller state lease of only the 525 acres of the Astronomy Precinct and contribute funds to DLNR or another appropriate entity to manage the 10,000 acres consisting of the Natural and Cultural Preservation Area. Similar comments were made by some of the observatories. There were a few comments that wanted to explore the possibility of having a Native Hawaiian entity or third party manage all the state conservation lands or at least the 10,000 acres of Natural and Cultural Preservation Area.

The current UH governance structure is not effective in managing Mauna Kea.

It is worth noting that most of the comments related to the effectiveness of the governance structure was made by UH Management Entities. The UH-Hilo Entities strongly believe that decision making related to Mauna Kea needs to be made by UH-Hilo Entities on Hawai'i Island. In addition, these same entities believe that OMKM is doing a fairly good job in implementing the CMP.

On the other hand, several of the UH Management Entities outside of UH-Hilo believe that the public perception is that OMKM is not doing a good job stewarding Mauna Kea. They believe that OMKM has not engaged the community, in particular members of the Native Hawaiian community. They also believe that OMKM has not effectively developed cultural education materials, information, or opportunities to collaborate with members of the Native Hawaiian community and organizations to promote cultural education and understanding of Mauna Kea. In response to the perceived deficiency, UH BOR Resolution 19-03 has proposed and begun implementing structural changes to the management of Mauna Kea.⁴³

With respect to the broader public comments on the effectiveness of the UH governance structure, most see UH as one entity. They either believe that the UH existing structure is doing a good job, or they believe that UH is mismanaging Mauna Kea and there is very little in between. There were a few comments that wanted to explore the possibility of having a Native Hawaiian entity or third party manage all the state conservation lands or at least the 10,000 acres of Natural and Cultural Preservation Area.

⁴³ BOR Resolution 19-03. Action Item No. 9 provides in relevant part, “As part of the reorganization and restructuring plan, an in-depth analysis will be done to determine whether the management of the Maunakea Science Reserve would be better served if transferred to a governmental authority or other third party entity, or through alternate management mechanisms.”

ISSUES AND COMMENTS BEYOND THE SCOPE OF THE CMP

There were numerous comments that were beyond the scope of the implementation of the CMP. We did not want to discount these comments as some of these issues had been identified in the CMP (see Section 2.1.4) and continue to linger as unresolved issues. Similar to the CMP, we wanted to respect and honor those comments by noting them below for appropriate consideration beyond this Report.

UH has not kept its “promises” to remove telescopes from Mauna Kea before proposing new telescope development.

This comment primarily related to the issue of timely decommissioning telescopes from the summit of Mauna Kea before any new telescope is constructed. As noted in the CMP, “the basis for this [decommissioning] was not only to preserve a ‘zero net gain’ of telescopes, but also because of the recognition that decommissioning is perhaps the most tangible form of actually listening to the community’s concerns that before new telescopes can be considered some obsolete facilities must come down.”⁴⁴ In listening to members of the Native Hawaiian community, for many who say UH hasn’t kept their promises, they refer to UH’s representations during the early years of the state lease that there would only be 13 telescopes. But now, UH is proposing the world’s largest telescope (TMT) before removing any telescope; 13 to 0.⁴⁵ We also heard from non-Native Hawaiians, that in order to show some good will, UH needs to facilitate the decommissioning process. In response, the UH BOR has established an accelerated schedule for the decommissioning of up to possibly five (5) telescopes.⁴⁶ However, there are many people in the community, including Native Hawaiians, who would like to see the retention of existing telescopes that are not obsolete as well as the construction of TMT because of the educational and economic benefits beyond the lease termination in 2033.

UH should not be managing the cultural and natural resources and should only manage the astronomy precinct.

Similar to the comments we heard related to governance, there were many comments, both from within UH and external to UH, that expressed that UH should not be managing the 10,763 acres of Natural and Cultural Preservation Area. Some of the comments expressed by UH Management Entities are that managing the state conservation lands to preserve and protect resources is outside of UH’s mission of education. Other comments, especially by members of the Native Hawaiian community is that UH should not be managing any of the state

⁴⁴ CMP, page 4-6.

⁴⁵ Some within the Native Hawaiian community say 13 telescopes for astronomy and 0 telescopes have come down for the Native Hawaiian community.

⁴⁶ BOR Resolution 19-03. Action item No. 1 relates to the decommissioning of the Caltech Submillimeter Observatory and the Hokukea sites. Action item No. 2 relates to establishing a schedule for the decommissioning process of the two sites by December 31, 2021. Action item No. 4 sets a date of December 30, 2025 to determine decommissioning of three (3) additional observatory sites, if required.

conservation lands at Mauna Kea because they do not have the cultural expertise to be stewarding one of the most significant cultural resources to the Native Hawaiian community. On the other hand, there were comments that if the 10,763 acres were to be returned to DLNR to manage, DLNR does not have the resources or capacity to preserve and protect the cultural and natural resources within the preservation area; the resources are better protected under UH. In addition, UH's management, especially by the OMKM Rangers, of the state conservation lands, provides additional protection to the adjacent DLNR's Mauna Kea Ice Age Natural Area Reserve and the State Mauna Kea Forest Reserve.

There is presumption that BLNR is going to renew the state lease to UH for the state conservation lands at Mauna Kea.

We received many comments that the renewal of the state lease to UH is a “done deal” because BLNR would not have approved the sublease to TMT if they did not anticipate renewing the state lease to UH. There were many comments by members of the Native Hawaiian community, that the state process is not fair, and it favors telescope development. For this reason, several of those same community members expressed that they do not trust UH, DLNR, or even the independence of this Report.

Other issues raised that were beyond the scope of the CMP and not fully discussed.

Rather than going into great detail, the following is a list of those issues:

- Use of ceded lands which have been “stolen” from the Hawaiian Kingdom;
- \$1 a year for lease rent does not accurately reflect the market value of the free telescope viewing time to UH;
- Ownership of the access road;
- Role of the Department of Hawaiian Home Lands in the management of Mauna Kea;
- Establish a Mauna Kea Reserve Commission, similar to the Kaho‘olawe Island Reserve Commission, to oversee the management of Mauna Kea;
- There are really more than 13 telescopes on Mauna Kea because some observatories have multiple facilities; and
- The State should use the federal Section 106 consultation process to engage Native Hawaiian individuals and organizations.

EVALUATION PROCESS AND OUTCOME

CMP REPORTING AND EVALUATION REQUIREMENTS

Section 7 of the CMP, describes the natural progression from (1) the MAs that are needed to address the various management needs, (2) that the MAs are organized by topic into four (4) major MCPs, (3) the MCPs were developed using the best available scientific and cultural information and community input, to support the **mission** to preserve, protect and enhance the cultural and natural resources within the UH Management Areas, and (4) each MCP emphasized the importance of coordinating with other agencies, adjacent landowners, and other stakeholders, including cultural practitioners and families with cultural or lineal connections to Mauna Kea to incorporate Native Hawaiian cultural values and traditional knowledge into management planning and activities.⁴⁷

The Mission of the Office of Mauna Kea Management is to achieve harmony, balance and trust in the sustainable management and stewardship of Mauna Kea Science Reserve through community involvement and programs that protect, preserve and enhance the natural, cultural and recreational resources of Maunakea while providing a world-class center dedicated to education, research and astronomy.

Section 7.4.2 of the CMP outlines the process for monitoring, evaluating, and updating the CMP to meet the “desired outcomes”⁴⁸ as set forth in the CMP. The purpose of the desired outcome is to “determine whether management actions are achieving the goals of the CMP and to provide a process for improving and updating management strategies through evaluation and revisions of the CMP.”⁴⁹ To determine whether the desired outcomes have been achieved, the CMP requires regular monitoring⁵⁰ and evaluation⁵¹ of the CMP to determine if the management actions are effective over time and are meeting management needs to ensure the best possible protection is afforded Mauna Kea’s resources. Pursuant to the adaptive management approach, evaluations should be done annually with review and revisions occurring every 5 years as updated information on the resources become known. Five-year evaluations and revisions should include consultation with federal and state agencies and the local community, to

⁴⁷ CMP, page 7-1.

⁴⁸ “Desired Outcome” summarizes the goal(s) of the management component plans. CMP, page 7-1.

⁴⁹ CMP, page 7-63.

⁵⁰ MA MEU-1 requires “OMKM to provide an annual progress report describing in detail the management goals, objectives, and actions for the year and what progress was made towards meeting them. The Progress Report should also describe actions to be taken to improve the program for the next year(s). The Progress Report is not intended to be a status report on the resources in the UH Management Areas; rather, it is meant to inform management and stakeholders of the progress of the program and direction it is to take in the future.” In addition, MEU-1 requires OMKM to provide Five Year Outcome Analysis Reports. CMP, at page 7.65.

⁵¹ MA MEU-2 provides that the CMP should be updated every five years, based on data collected during various program management activities (e.g. natural or cultural resources monitoring, research projects). Id.

inform stakeholders on program progress, and to gather input on changes or additions to management activities.

While OMKM has submitted annual reports to BLNR on their implementation of the MAs, OMKM has not prepared the Five-Year Outcome Analysis Report (Analysis Report). Presumably, the Analysis Report would have utilized the adaptive management approach and summarized the data collected during the monitoring and research studies to determine the effectiveness of the management actions on preserving and protecting the resources on Mauna Kea. Thus, in the absence of the Analysis Report, we had to utilize an alternative evaluation model to conduct the independent evaluation.

THE LOGIC MODEL METHOD WAS USED TO CONDUCT THE INDEPENDENT EVALUATION

Based upon the Project Team's experience and expertise, a Logic Model⁵² approach was determined to be the most appropriate to conduct the independent evaluation of OMKM's implementation of the CMP. This model specifically focuses on whether the MAs that were completed (output) by OMKM achieved the desired outcomes as set forth in each of the MCPs. Each MCP identified MAs to address the needs⁵³ in order to achieve the desired outcomes.

There are four (4) MCPs:

- 7.1 Understanding and protecting Mauna Kea's Cultural and Natural Resources
 - 7.1.1 Native Hawaiian Cultural Resources
 - 7.1.2 Natural Resources
 - 7.1.3 Education and Outreach
 - 7.1.4 Astronomy Resources
- 7.2 Managing Access, Activities and Uses
 - 7.2.1 Activities and Use
 - 7.2.2 Permitting and Enforcement

⁵² A logic model is a systematic and visual way to present and share an understanding of the relationship among resources that were chosen to operate your program, the activities you plan, and the changes or results you hope to achieve." W.K. Kellogg Foundation 2004, <http://toolkit.pellinstitute.org/evaluation-guide/plan-budget/using-a-logic-model/>

⁵³ The CMP defines "Need" as the background information on what type of management actions are needed to achieve the desired outcome and why they are needed. To achieve the desired outcomes, management needs were developed in four areas: education, information gathering, management measures, and rules and enforcement.

- 7.3 Managing the Built Environment
 - 7.3.1 Infrastructure and Maintenance
 - 7.3.2 Construction Guidelines
 - 7.3.3 Site Recycling, Decommissioning, Demolition and Restoration
 - 7.3.4 Considering Future Land Use

- 7.4 Managing Operations
 - 7.4.1 Operations and Implementation
 - 7.4.2 Monitoring, Evaluation, and Updates

For the independent evaluation, the Project Team reviewed, (1) the MCP MAs and desired outcomes, (2) OMKM’s implementation of the MAs based upon their annual reports and updates, (3) public input based upon comments provided through the website, the three virtual community meetings, and stakeholder input, and (4) the specific impact of OMKM’s actions to achieve the desired outcomes. The details of these reviews are included in Appendix B.

However, for ease of review, we have prepared a Summary of the Independent Evaluation for each MCP in tables below. Each table has five columns as shown:

MCP Section and Desired Outcome	OMKM Implementation Status	Public Input	Independent Evaluation of Impact on Outcome	Recommendations
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The content of each column is described below:

1. The **MCP Section and Desired Outcome** as specifically provided in the CMP;
2. The **OMKM Implementation Status** shows the total number of actions or activities implemented in that specific section and the action status reported in the OMKM 2020 Annual Report;⁵⁴
3. **Public⁵⁵ Input** summarizes a range of some of the comments we received from the three virtual community meetings, comments, website, and stakeholder meetings;

⁵⁴ OMKM 2020 Annual Report to the Board of Land and Natural Resources, Status of the Implementation of the Mauna Kea Comprehensive Management Plan. See Appendix A.7

⁵⁵ “Public” includes interested stakeholders and general public. See Section titled “Stakeholders and General Public” and Appendix A1.

4. The ***Independent Evaluation of Impact on Outcome*** is a qualitative assessment by the Project Team based primarily on public input.⁵⁶ Three levels are indicated: “**Good progress on achieving Outcome,**” “**Some progress on achieving Outcome,**” and “**Minimal progress on achieving Outcome.**”
5. ***Recommendations*** include the type of metric that could be developed in the CMP revision to track outcomes more quantitatively.

⁵⁶ The CMP utilized key concepts from *adaptive management* in developing the management actions. “*Adaptive management* is defined as a systematic process for continually improving management policies and practices for resource protection by learning from the outcomes of past and current management activities. Adaptive management recognizes that there is a level of uncertainty about the ‘best policy or practice for a particular management issue, and therefore requires that each management decision be revisited in the future to determine if it is providing the desired outcome. Management actions in a plan guided by adaptive management can be viewed as hypotheses and their implementation as test of those hypotheses. Once an action has been completed, the next, equally important, step in an adaptive management protocol is the assessment of the actions effectiveness (results). A review and evaluation of the results allows managers to decide whether to continue the action or to change course. This experimental approach to resource management means that regular feedback guides managers’ decision and ensure that future strategies better define and approach the objective of the management plan.” CMP, page 2-6. Since the CMP had not been previously evaluated based a set of metrics or measures, the Project Team has to rely public and other government agencies input to assess whether OMKM effectively implemented the CMP to achieve the desired outcomes.

Table 1: Summary Table on the Independent Evaluation on Achieving the Desired CMP Outcomes

MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
7.1 Understanding and Protecting Mauna Kea's Cultural and Natural Resources				
<p>7.1.1 Native Hawaiian Cultural Resources: Increase understanding and appreciation of Native Hawaiian history and cultural practices related to Mauna Kea to ensure that these practices are protected and respected. Identify, document the condition of, and protect cultural resources and historic properties in the UH Management Areas.</p>	<p>Of the 14 Actions:</p> <ul style="list-style-type: none"> • Five are "ongoing" • Nine are "completed." <p>Training and educational programs have been developed. Many cultural practices have been protected with the HAR.</p> <p>HAR Chapter 2-26 was not adopted until January 2020.</p> <p>OMKM placed ads inviting community members to participate in talk story session. KKM hosted one talk story session on matters related to CMP actions, with representatives from DLNR, DHHL, OHA and members of the Native Hawaiian community.</p>	<p>Materials and training programs developed have insufficient content from Native Hawaiian cultural perspectives and materials prepared by OMKM shows a lack of cultural sensitivity and understanding. Cultural stakeholders feel they have not been consulted about content and protocols on cultural issues or practices.</p> <p>KKM review is not sufficient. KKM meetings are not open and they have not consulted with cultural stakeholders.</p> <p>OMKM has removed cultural offerings, ahus, stackings of pōhaku, and cultural features, without consulting with families who have cultural and lineal connections to Mauna Kea, Kūpuna, cultural practitioners, OHA, and other NHOs (hereinafter collectively NHOs). There is a lack of Hawaiian decision making in matters related to identification and protocols related to cultural resources.</p> <p>Cultural and religious practitioners felt the initial draft admin rules violated Art XII, Section 7.</p> <p>There is a lack of cultural presence on Mauna Kea because all you see are observatories.</p> <p>The archaeological documents are not subject to independent scrutiny. The archaeological monitoring reports have not been timely submitted.</p>	<p>Some Progress on Achieving Outcome</p> <p>Specific actions have been completed or are ongoing. However, the admin rules to protect the cultural resources was not codified until January 2020.</p> <p>Unclear if the materials and training programs are sufficient to increase understanding of Native Hawaiian history and cultural practices related to Mauna Kea.</p>	<p>Actions should be completed in a timelier fashion</p> <p>When developing materials related to Native Hawaiian history and cultural practices, NHOs should be involved in developing and reviewing the materials and providing suggestions.</p> <p>There needs to be greater clarity of the role of KKM with respect to engaging and coordinating with NHOs on cultural issues and protocols.</p>

MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
<p>7.1.2 Natural Resources: Increase understanding of the status of natural resources (biotic and abiotic) and identify threats to these resources in order to better protect and preserve unique geological features, ecosystem functions, subalpine and alpine habitats, and biological communities through adaptive management of stressors and threats.</p>	<p>Of the 18 Actions</p> <ul style="list-style-type: none"> • Two are “completed/ongoing” • 15 are “ongoing” • The status of NR-14 requiring use of adaptive management to review programs annually and update CMP every 5 years based on results of program review, is reported as “ongoing.” However, it is unclear if programs have been reviewed annually. Also, there had not been a revision of the CMP since the original. <p>HAR effective January 2020 to limit threats to natural resources.</p> <p>Studies were undertaken, and plans developed and implemented.</p>	<p>OMKM has done a good job managing natural resources by managing invasive species, protecting the wekiu bug habitat, and conducting biological studies.</p> <p>Baseline surveys took time but are especially important to develop long term management programs.</p> <p>Unsure how to access some of the studies.</p> <p>Studies are not subject to public or peer scrutiny.</p>	<p>Good progress on Achieving Desired Outcome</p> <p>OMKM has done a good job at increasing the understanding of the status of natural resources and identifying threats. The public needs to better understand what is being studied and the results of those studies.</p> <p>Over the past ten years are the natural resources on Mauna Kea in better condition? Same? Worse? What needs to be focused on in the next ten years?</p> <p>People need to know how to access studies.</p>	<p>Studies should be easily accessible to the public – available to download online.</p> <p>Develop a Natural Resources Dashboard that shows metrics that track the status of natural resources, for example: annually what is the number of invasive species? Show a report card on the health of the natural resources.</p>

MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
<p>7.1.3 Education & Outreach: Build & maintain a constituency to engage in active and meaningful stewardship of Mauna Kea, through education and involvement of the public, to support, enhance conservation, and sustain the natural, cultural, and astronomical resources of Mauna Kea.</p>	<p>Of the eight Actions</p> <ul style="list-style-type: none"> • Six are “ongoing” • One is “completed/ongoing” • One is “In progress.” <p>Developed orientation program for people working on Mauna Kea.</p> <p>There have been outreach efforts in schools and with volunteers.</p> <p>Output measures provided in the 2020 Annual Report to DLNR:</p> <p>Approximately 1,500 individuals have a current, valid orientation certificate.</p> <p>124 community updates conducted over 12 years, 63 community outreach events conducted over nine years, and 19 symposiums, conferences and special events conducted over eight years. 30 presentations in the Maunakea Speakers Series. 110 OMKM E-newsletters issued over nine years, and 102 Astronomy E-newsletters issued over six years.</p> <p>Two brochures developed and updated, social media presence, YouTube video, and young-people oriented materials.</p> <p>58 projects with 1,493 volunteers conducted over nine years.</p>	<p>There has been little community engagement and outreach. OMKM needs to develop relationships with the broader community beyond their supporters.</p> <p>The public does not know all the good things that are happening on Mauna Kea. UH does not do a good job communicating to the public about the work being done on Mauna Kea.</p> <p>The orientation video lacks Native Hawaiian cultural perspective and sensitivity of the long-standing hurts, pains, and concerns by the Native Hawaiian community on imbalance between protecting cultural resources and pursuing telescope development.</p> <p>Visitors should be required to take the orientation training or video before accessing Mauna Kea summit to ensure a better understanding of the cultural resources on Mauna Kea.</p> <p>OMKM and KKM have not consulted with NHOs in decision making for management of Mauna Kea.</p> <p>The educational materials lack the cultural perspective.</p> <p>There are members of the Native Hawaiian community who do not believe Mauna Kea is sacred and would like to see telescope use continue on Mauna Kea.</p> <p><i>‘Imiloa’s A Hua He Inoa: Hawaiian Culture Based Celestial Naming program is globally known and admired.</i></p>	<p>Minimal progress on Achieving Outcome.</p> <p>A lot of actions have taken place and been documented by OMKM.</p> <p>However, in the actions undertaken it is unclear if the programs have achieved the desired outcome of building and maintaining a larger and/or stronger constituency to steward Mauna Kea.</p> <p>Also, no sense of how far the programs have reached – for example, the number of unique volunteers v. total number at each session.</p>	<p>Outcome measures could include OMKM implementing metrics on the impact their activities have had on building their constituency; whether workers and visitors to Mauna Kea have increased their awareness and appreciation of Mauna Kea’s cultural, historical, and natural resources. In addition, recommend measuring how well the community’s perception of transparency and involvement have changed.</p> <p>In addition to those who work on Mauna Kea, visitors should be required to watch the video to familiarize themselves with the cultural significance of Mauna Kea.</p> <p>Utilize ‘Imiloa Astronomy Center to develop culturally based materials to educate and raise awareness of the cultural and natural resources on Mauna Kea, including the <i>A Hua He Inoa</i> program. Utilize ‘Imiloa Astronomy Center to take a more active role in community outreach.</p>

MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
<p>7.1.4 Astronomy Resources: Maintain Mauna Kea's unique environment that makes it a premiere location for astronomical observation. Operate the scientific reserve as a buffer zone to prevent the intrusion of activities incompatible with the use of the land as a scientific complex or observatory.</p>	<p>Of the two Actions</p> <ul style="list-style-type: none"> Two are "Ongoing" <p>Administrative rules became effective in January 2020.</p> <p>Working on monitoring and minimizing the light pollution, radio frequency interference and dust.</p>	<p>Astronomy stakeholders believe that OMKM is doing a good job in managing the area.</p> <p>They believe that OMKM could have more regular, ongoing communications rather than waiting until big issues arise.</p>	<p>Good progress on Achieving Outcome</p> <p>The Administrative rules were passed to formalize protection of the area for astronomy.</p> <p>Timing could have been faster.</p>	<p>Outcome measures could include an annual survey of astronomical stakeholders tracking how well OMKM has done in maintaining the unique environment of Mauna Kea.</p>
7.2 Managing Access, Activities and Uses				
<p>7.2.1 Activities and Uses: Retain and enhance recreational and cultural activities, ensure regulation of commercial activities, and support scientific studies while maintaining adequate protection of resources, educating users regarding resource sensitivity, and ensuring the health and safety of those visiting or working at Mauna Kea.</p>	<p>Of the 12 Actions</p> <ul style="list-style-type: none"> Eight are "Complete/Ongoing" Four are "Ongoing" <p>Administrative rules became effective in January 2020.</p> <p>OMKM initiated a study in 2019 to assess the capacity for commercial tour operations.</p>	<p>The community is generally positive about how OMKM has maintained and protected the resources on Mauna Kea. The feeling is that the area has improved significantly under the OMKM management.</p> <p>Rangers received many compliments on their knowledge and guidance that they provide to visitors.</p> <p>There needs to be better management limiting the number of cars allowed to drive the access road to the summit. UH is considering a shuttle service to manage access by visitors.</p> <p>Some of the commercial operators conduct their own cultural orientation to their customers to ensure that they conduct themselves in a respectful and appropriate manner when on Mauna Kea.</p>	<p>Good progress on Achieving Outcome</p> <p>The Administrative rules were passed to codify restrictions and regulations.</p> <p>Timing could have been faster.</p>	<p>Outcome measures could include periodic surveys of Mauna Kea visitors, commercial tour operators, and others accessing the site on how well OMKM is managing the area.</p>

MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
<p>7.2.2 Permitting & Enforcement: Achieve compliance with existing and any new policies and regulations designed to manage and minimize human impacts, to preserve and protect Mauna Kea's resources.</p>	<p>Of the eight Actions</p> <ul style="list-style-type: none"> • Six are "Ongoing" • Two are "Completed" <p>Administrative rules became effective in January 2020.</p> <p>Since 2000, there were 103 community engagement and outreach actions taken related to the development of the administrative rules, including updates, consultations, briefings, open houses, and public hearings.</p>	<p>Generally positive feedback on the level of policies and regulations. Positive level of enforcement primarily attributed to the Rangers.</p> <p>Rangers are doing a good job of educating visitors to stay on the trails and not to park their cars where they can damage the natural and cultural resources.</p> <p>There needs to be better management of the commercial operators and increased fees towards management of Mauna Kea resources; as there is unlimited access by recreational users (tourists), yet cultural practitioners are regulated.</p> <p>Lack of coordination and clarity between County enforcement and DOCARE on jurisdiction of access road.</p>	<p>Good progress on Achieving Outcome</p> <p>The Administrative rules were passed to codify restrictions and regulations, but it took over 10 years to adopt the rules.</p>	
7.3 Managing the Built Environment				
<p>7.3.1 Infrastructure and Maintenance: Manage the built environment by implementing an Operations, Monitoring and Maintenance Plan (OMMP) containing specific maintenance strategies and protocols that will result in minimal disruptions to activities and uses, minimize impacts to the resources, and ensure that permittees remain compliant with their CDUP requirements.</p>	<p>Of the 14 Actions</p> <ul style="list-style-type: none"> • Ten are "Ongoing" • Three are "Completed/Ongoing" • One is "In Progress" <p>Administrative rules became effective in January 2020.</p> <p>An Operations Monitoring and Maintenance Plan was reviewed by KKM and approved by MKMB.</p> <p>Procedures have been put in place and studies are being conducted.</p>	<p>Generally positive feedback on how OMKM is managing and maintaining the infrastructure within the area.</p> <p>Many of the existing observatories are incorporating sustainable technologies into their facilities.</p>	<p>Good progress on Achieving Outcome</p> <p>The Administrative rules were passed to codify restrictions and regulations.</p> <p>Timing could have been faster.</p>	<p>Recommend reporting on the outcome of the various studies being conducted and how those studies will be used in the future.</p>
<p>7.3.2 Construction Guidelines: Minimize adverse impacts to resources during all phases of construction, through use of innovative best management practices.</p>	<p>Of the nine Actions</p> <ul style="list-style-type: none"> • Nine are "Ongoing" <p>TMT is the first project requiring construction guidelines. All the guidelines have been included as part of the proposed TMT Management Plan in its CDUA.</p>	<p>Given that construction has yet to begin, no feedback on how well the adverse impacts have been minimized.</p> <p>KKM is reviewing any construction activity that could involve ground disturbance, to ensure cultural resources are not disturbed.</p>	<p>Good progress on Achieving Outcome</p>	

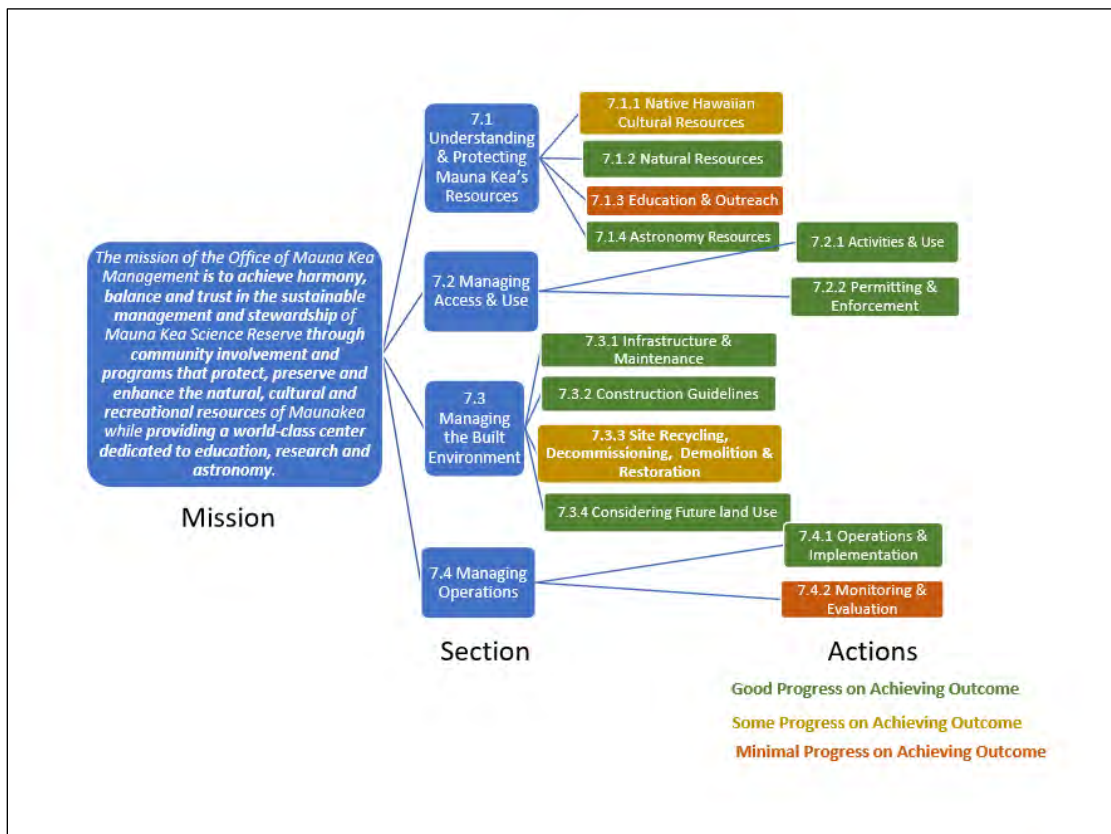
MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
<p>7.3.3 Site Recycling, Decommissioning, Demolition, and Restoration: To the extent possible, reduce the area disturbed by physical structures within the UH Management Areas by upgrading and reusing buildings and equipment at existing locations, removing obsolete facilities, and restoring impacted sites to pre-disturbed condition.</p>	<p>Of the three Actions</p> <ul style="list-style-type: none"> • Three are "Ongoing" <p>All the actions have been incorporated into planning for TMT, the first new facility.</p> <p>The 2010 Decommissioning Plan has a defined process. Two of the sites have started the process in 2019.</p>	<p>Feedback has focused on the observatories that are no longer in use on Mauna Kea. Actions to begin the decommissioning process only started in 2019, leaving community members to wonder why it took so long.</p> <p>UH represented/promised to the community no more than 13 telescopes would be built on Mauna Kea. UH should have timely decommissioned some telescopes before new telescopes are constructed (TMT). There is at least one telescope on Mauna Kea that is not in use, but there has been no attempt to remove it.</p> <p>At the end of the state lease in 2032, all the telescopes need to be decommissioned and the site restored.</p> <p>The CMP does not require decommissioning of telescopes that are not obsolete.</p> <p>BOR, through Resolution 19-03, has established a schedule to timely decommission at least two telescopes by December 2021 and a determination whether to decommission possibly three more telescopes by December 2021.</p>	<p>Some Progress on Achieving Outcome</p> <p>Decommissioning requirements included in the TMT Management Plan.</p> <p>Actions on decommissioning some of the sites only began in 2019.</p>	
<p>7.3.4 Considering Future Land Use: To protect cultural and natural resources in the assessment of future projects.</p>	<p>Of the seven Actions</p> <ul style="list-style-type: none"> • All seven are "Ongoing" <p>Of the seven actions in the plan, all have been incorporated in planning for TMT, the first new facility.</p> <p>UH President Lassner confirmed that TMT will be the last telescope to be built on undisturbed land.</p>	<p>Community input has been both for and against constructing TMT.</p> <p>TMT is being proposed to be developed in an area that is outside of the 2000 Master Plan because OMKM has not developed a map of land use where development will not be allowed.</p>	<p>Good progress on Achieving Outcome</p>	

MCP Section & Desired Outcome	OMKM's Self-Assessment	Public Input	Independent Evaluation of Impact on Desired Outcome	Recommendations
<p>7.4 Managing Operations</p> <p>7.4.1 Operations and Implementation: Conduct effective operations to support management that is focused on resource protection, education, and public safety.</p>	<p>Of the 5 Actions</p> <ul style="list-style-type: none"> • Two are "Ongoing" • Two are "Completed" • One is "Completed/Ongoing" <p>MKMB meets regularly, holds public meetings which includes consultation with KKM. OMKM, KKM and MKMB are responsible for the review of projects proposed for UH's managed lands compliance with DLNR conservation district rules and the CMP.</p> <p>Public can attend the MKMB meetings.</p>	<p>Public comments were mixed on this MA. The observatories feel that OMKM and MKSS are doing a good job with operation and maintenance. Other government agencies, including DLNR, feel that OMKM and the Rangers are doing a really good job managing the land uses to preserve and protect the cultural and natural resources. The Rangers are the "eyes and ears" on Mauna Kea, they ensure public safety for everyone. There has been great improvement since the 1998 Audit report.</p> <p>There were public comments, especially from members of the Native Hawaiian community that there has been no involvement or discussion with the community and stakeholders on resource management.</p> <p>There is disconnect between UH-Hilo Management Entities and UH Systems.</p>	<p>Good progress on Achieving Outcome</p>	
<p>7.4.2 Monitoring, Evaluation, and Updates: Determine whether management actions are achieving the goals of the CMP and provide a process for improving and updating management strategies through evaluation and revisions of the CMP.</p>	<p>Of the three Actions</p> <ul style="list-style-type: none"> • Three are "Ongoing" <p>MEU-2 requires OMKM to "conduct regular updates of the CMP that reflect outcomes of the evaluation process, and that incorporate added information about the resources."</p> <p>OMKM is in the process of drafting the 5-year Outcome Analysis Report.</p>	<p>Unclear if OMKM has evaluated whether the CMP actions they have undertaken has made progress on achieving stated Desired Outcomes.</p> <p>The public has not been involved nor provided input into OMKM's annual reports to BLNR.</p> <p>OMKM has not completed a 5- year CMP update since the approval of the CMP.</p>	<p>Minimal progress on Achieving Outcome.</p> <p>If the CMP had been reviewed and updated in a timely manner, it is likely that Outcome measures would have been developed and tracked over time.</p>	<p>Develop appropriate measures to track progress being made toward achieving Desired Outcomes. These measures will serve as indicators of whether progress is being made or if actions need to be adjusted to better achieve the Outcomes.</p>

OVERALL SUMMARY OF OMKM'S IMPLEMENTATION OF THE CMP

The diagram below illustrates how the MCPs of the CMP connect to achieve OMKM's Mission. The color codes are the same as used in the Evaluation of Impact on Outcomes. Under the four (4) MCPs, there are twelve (12) desired outcomes. Overall, good progress was made on achieving eight of the desired outcomes; some progress was made on achieving two of the desired outcomes and minimal progress was made on achieving two of the desired outcomes.

Figure 2: The Links Between the OMKM Mission and MCP Management Actions



AREAS WHERE OMKM HAS NOT EFFECTIVELY IMPLEMENTED THE CMP TO ACHIEVE THE DESIRED OUTCOMES

As noted above, OMKM has made, in some cases, significant strides in implementing the CMP to achieve the desired outcomes, particularly in the areas of the “nuts and bolts” of managing the land uses and activities and supporting astronomy. However, in the areas of Native Hawaiian Cultural Resources, Education and Outreach, decommissioning, and evaluation, OMKM has not effectively achieved the desired outcomes. Based primarily on public input, the

following are some of the significant “disconnects” between OMKM and the public, in particular, the Native Hawaiian community, in achieving the desired outcomes:

Outreach and communications

Insufficient outreach and communications with stakeholders and the community resulted in many not knowing what was taking place on Mauna Kea. For example, OMKM conducted many studies, but stakeholders did not understand how to access them. There is no dashboard that shows the conditions of natural resources on Mauna Kea such as number of invasive species reported, number of visitors, etc. overtime. Accessing documents shared at MKMB meetings requires accessing the OMKM website, and multiple clicks to find the right documents.

Cultural Education

Materials and programs developed to educate staff and visitors about Mauna Kea lacked the Native Hawaiian perspective on its importance. Native Hawaiian practitioners, Families who have cultural or lineal connections to Mauna Kea, and NHOs feel they were not adequately or regularly consulted and/or informed about actions taking place on Mauna Kea.

Failure to timely implement certain MAs

OMKM did not complete many of the actions until recently. The HAR related to Mauna Kea was only approved in January 2020. Likewise, the decommissioning process of two telescopes did not begin until 2019. This lack of progress in decommissioning has diminished the public trust in OMKM’s management of Mauna Kea.

OMKM’s updates do not include metrics to evaluate progress towards achieving the desired outcomes

Plan 7.4.2 requires OMKM to “conduct regular updates of the CMP that reflect outcomes of the evaluation process, and that incorporates new information about the resources.” The annual reports to BLNR update the status of the plans’ actions. It does not address progress made toward achieving the Desired Outcome of the MCP. Evaluation of Desired Outcomes could have led to identifying metrics to track outcomes and improve actions.

CONCLUSION

The purpose of the independent evaluation was to, (1) evaluate the effectiveness of UH, and specifically OMKM's implementation of the MCPs, and (2) evaluate UH's efficiency and the governance structure in managing the cultural and natural resources within the UH Management Areas under the CMP. UH's self-assessment and many of the public comments which included members of the Native Hawaiian community and government agencies, have acknowledged that OMKM has implemented most of the 103 MAs within the MCPs. Many have commented that OMKM has effectively implemented many of the MAs that have resulted in protecting and preserving the cultural and natural resources within the state conservation lands.

However, in the areas of untimely adoption of the administrative rules, cultural resources, and education and community outreach, especially with the Native Hawaiian stakeholders, the efforts by OMKM have been ineffective to achieve the desired outcome. The desired outcome is to increase understanding and appreciation of Native Hawaiian history and cultural practices related to Mauna Kea to ensure that these practices are protected and respected. While there are Native Hawaiians who believe OMKM's actions have been respectful of the Hawaiian culture, the greater sentiment was a deep feeling of disrespect by OMKM's actions in managing Mauna Kea, as well as UH's action in pursuing telescope development over protecting the resources.

With respect to the efficiency of UH's governance structure in managing the state conservation lands at Mauna Kea, the UH BOR appears to be internally addressing this issue through their Resolution 19-03. They have taken steps towards developing a reorganization and restructuring plan that would consider an alternative governance and management mechanisms to improve operations and management to make it more efficient, effective, and transparent.

In conclusion, UH, and specifically OMKM, has implemented most of the CMP MAs, and in many cases, effectively implemented them to achieve the desired outcomes of protecting the resources. Unfortunately, the MA related to cultural resources that was designed to respect the Hawaiian cultural practices and resources, and MA related to education and outreach that was intended to restore trust between UH and the Native Hawaiian community have not been effectively implemented. Management plans are created with the best of intentions; but ultimately, the proof is in the implementation.

COMMENDING CASCA'S DECISION NOT TO SUPPORT TMT WITHOUT NATIVE HAWAIIAN CONSENT

One of the TMT project's biggest and long standing supporters, the Canadian Astronomical Association (CASCA), now proclaims that "unless the TMT project has consent from the Native Hawaiians, Canada's astronomical community cannot support its construction on Maunakea."

One of the TMT project's biggest and long standing supporters, the Canadian Astronomical Association (CASCA), now proclaims:

Exhibit B

Minute Order 1



EXHIBIT "07"

“Unless the TMT project has consent from the Native Hawaiians, Canada’s astronomical community cannot support its construction on Maunakea.” This statement was shared by Dr. Kim Venn this past Tuesday at CASCA’s Annual Meeting that CASCA is holding online this week. Dr. Venn is one of three Canadian TMT Board Members and a member of the CASCA/ACURA TMT Advisory Committee (CATAC).

Many of us also saw a screenshot of Dr. Venn’s presentation slide shared by Dr. Bryan Gaensler on Twitter. Dr. Gaensler is CASCA’s co-chair of its Long Range Plan 2020 Panel.

Also conveyed in the screenshot shared by Dr. Gaensler of Dr. Venn’s presentation was the following:

“As excited as we are about the scientific potential and engineering excellence of the TMT, we believe that astronomical discovery cannot come at the expense of human rights for the people on whose lands we operate our telescopes — anywhere in the world. This position is consistent with CASCA’s Long Range

In 2019, in response to hundreds of kia'i peacefully assembling to oppose the construction of the TMT, police showed up in force in full riot gear. Photo: Hawai'i Tribune Herald

“Unless the TMT project has consent from the Native Hawaiians, Canada’s astronomical community

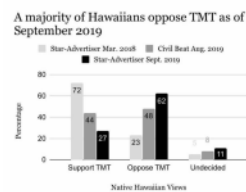
Plan 2020.” Indeed, CASCA’s Long Range Plan (p. 115) notes the following:

“The nature of astronomy is such that sites in isolated or sparsely populated areas often best meet the scientific requirements for experiments and observatories. As a consequence, astronomy has long benefited from building telescopes and other facilities on carefully chosen locations in Canada and throughout the world (e.g., Hawai’i, South Africa, Australia, Chile). However, these same sites often either belong to or have substantial cultural, environmental or economic significance to Indigenous Peoples, traditional title holders or other long standing local communities.

“There have been many instances when astronomy projects have gone ahead over the objections of Indigenous Peoples, or where commitments or promises made by astronomers to local communities have not been fully met. Looking to the future, Canadian astronomers must ensure that their ethics and values apply to the interactions with society that result from the creation and operation of astronomical facilities. The astronomy community must consequently engage meaningfully and

cannot support its construction on Maunakea.”

– Dr. Kim Venn, TMT board member, and a member of the CASCA/ACURA TMT Advisory Committee (CATAC)



TMT proponents often like to cite poll data showing support for the project. However, poll data from the Star Advertiser and the Civil Beat over a

sincerely with Indigenous and local communities as soon as potential projects are conceived, should seek consent from those who would be affected before proceeding with a project, and must sustain engagement and consent throughout the lifetime of projects that go forward.”

As a result, the CASCA Long Range Plan (p. 16) offers this conclusion:

“We recommend that the Canadian astronomical community (e.g., ACURA, CASCA and NRC-HAA) work together with Indigenous representatives and other relevant communities to develop and adopt a set of comprehensive guiding principles for the locations of astronomy facilities and associated infrastructure in which Canada participates. These principles should be centred on consent from the Indigenous Peoples and traditional title holders who would be affected by any astronomy project. In addition, when such consent does not exist, the principles should recognize that the use or threat of force is an unacceptable avenue for developing or accessing an astronomical site. The principles should also acknowledge that

period of two years actually shows eroding support, and in the case of Native Hawaiians, outright opposition.

5/21/2021

Commending CASCA's decision NOT to support TMT without Native Hawaiian Consent - Kanaeokana

ongoing consent from Indigenous Peoples and continuing consultation with all relevant local communities are both essential throughout a project's lifetime. These principles should be developed as soon as possible, and then applied to all future Canadian participation in new or existing astronomical programs, projects and national and international facilities. Engagement and implementation should be consistent with the spirit of the Calls to Action of the Truth and Reconciliation Commission of Canada and of the United Nations Declaration on the Rights of Indigenous Peoples.”

We commend CASCA and its members who are affirming that absent consent of Native Hawaiians, the TMT cannot be built and that the use or threat of violence is not an acceptable course of action to access astronomical sites.

Links:

- CASCA website: <https://casca.ca/>
- TMT Board Members: <https://www.tmt.org/page/governance>
- CASCA's Long Range Plan: https://casca.ca/wp-content/uploads/2021/04/20UOT001_CASCA_LRP_EN_vFA2.0.pdf

In the early morning of July 15th, 2019, 8 kia'i chained themselves to a grate on Mauna Kea Access Road, laying their bodies down in a selfless act of aloha 'āina.

Exhibit B
Minute Order 1

<https://kanaeokana.net/noconsent>

5/7

5/21/2021

Commending CASCA's decision NOT to support TMT without Native Hawaiian Consent - Kanaeokana

- Truth and Reconciliation Commission of Canada: <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525>
- Truth and Reconciliation Commission of Canada, Calls to Action: http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf
- United Nations Declaration on the Rights of Indigenous Peoples: <https://undocs.org/A/RES/61/295>

04:00



No ku'u lāhui e hā'awi pau a i ola mau. Video: Mikey Inouye

<https://kanaeokana.net/noconsent>

6/7

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of: _____)
 A Contested Case Hearing Re: Conservation District) CERTIFICATE OF SERVICE
 Use Permit (CDUP) HA-3568 _____)

CERTIFICATE OF SERVICE

We hereby certify that a copy of the foregoing was served on the following via email unless otherwise specified below:

Bin C. Li,
 1151 Punchbowl, Room 131
 Honolulu, HI 96813
 bin.c.li@hawaii.gov
 DLNR.CO.APO@hawaii.gov
 (original+ digital copy)

Watanabe lng LLP
 rshinyama@wik.com
 douging@wik.com
 Counsel for TMT International
 Observatory, LLC

Maelani Lee
 maelanilee@yahoo.com

Lanny Alan Sinkin
 lanny.sinkin@gmail.com
 The Temple of Lono

Linda Chow
 Julie China, Deputies Attorney General
 Linda.L.Chow@hawaii.gov
 julie.h.china@hawaii.gov
 Counsel for the Bd of Land & Natural Res.

Harry Fergerstrom
 hankhawaiian@yahoo.com

Kalikolehua Kanaele
 akulele@yahoo.com

Richard L DeLeon
 kekaukike@msn.com

Stephanie-Malia:Tabbada
 s.tabbada@hawaiiintel.net

Carlsmith Ball LLP
 isandison@carlsmith.com
 Counsel for University of Hawai'i at Hilo

Mehana Kihoi
 uhiwai@live.com

Tiffnie Kakalia
 tiffniekakalia@gmail.com

J. Leina'ala Sleightholm
 leina.ala.s808@gmail.com

C. M. Kaho'okahi Kanuha
 kahookahi@gmail.com

Glen Kila
 makakila@gmail.com

Torkildson, Katz, Moore, & Harris
 lsa@torkildson.com
 njc@torkildson.com
 Counsel for Perpetuating Unique
 Educational Opportunities (PUEO)

Joseph Kualii Lindsey Camara
 kualiiic@hotmail.com

Dwight J. Vicente
 dwightjvicente@gmail.com

Cindy Freitas
 hanahanai@hawaii.rr.com

Brannon Kamahana Kealoha
 brannonk@hawaii.edu

William Freitas
 pohaku7@yahoo.com

DATED: Honolulu, Hawai'i

May 24, 2021

/s/ Richard Naiwieha Wurdeman

RICHARD NAIWIEHA WURDEMAN
 ATTORNEY AT LAW, A LAW CORPORATION

Bianca Isaki

 LAW OFFICE OF BIANCA ISAKI
 BIANCA ISAKI
 Attorneys for the Mauna Kea Hui

Case No. HA-22-02

CERTIFICATE OF SERVICE

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

1. Minute Order No. 1, Dated Oct 20, 2021

Was duly served upon the following parties, by email, on Oct 20, 2021 :

Linda L.W. Chow
Laure K. Chun
Deputy Attorneys General
Linda.L.Chow@hawaii.gov
Lauren.K.Chun@hawaii.gov
*Attorneys for the Board of Land
and Natural Resources*

Jesse K. Souki
Associate General Counsel
University of Hawai'i
souki@hawaii.edu
*Attorney for University of
Hawai'i, Hilo*

J. Leina'ala Sleightholm
leina.ala.s808@gmail.com

Lincoln S.T. Ashida
Newton J. Chu
Torkildson, Katz, Moore, &
Harris
Isa@torkildson.com
njc@torkildson.com
*Attorneys for Perpetuating
Unique Educational
Opportunities (PUEO)*

J. Douglas Ing
Brian A. Kang
Ross Shinyama
Summer H. Kaiawe
Watanabe Ing LLP
douging@wik.com
bkang@wik.com
rshinyama@wik.com
skaiawe@wik.com
*Attorneys for TMT
International
Observatory, LLC*

Harry Fergerstrom
hankhawaiian@yahoo.com

Richard L DeLeon
kekaukike@msn.com

Mehana Kihoi
uhiwai@live.com

C. M. Kaho'okahi Kanuha
kahookahi@gmail.com

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

Cindy Freitas
hanahanai@hawaii.rr.com

Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
The Temple of Lono

Kalikolehua Kanaele
akulele@yahoo.com

Stephanie-Malia:Tabbada
s.tabbada@hawaiiintel.net

Tiffnie Kakalia
tiffniekakalia@gmail.com

Glen Kila
makakila@gmail.com

Dwight J. Vicente
dwightjvicente@gmail.com

Brannon Kamahana Kealoha
brannonk@hawaii.edu

William Freitas
pohaku7@yahoo.com

DATED: Honolulu, Hawaii, Oct 20, 2021

S Michael Cain

Michael Cain
Custodian of Records
Board of Land and Natural Resources

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF	)	Case No. HA-22-02
)	
	)	Temple of Lono
The Petition of Mauna Kea Hui for Declaratory	)	Brief in Response to
Order Filed May 24, 2021	)	Petitioners' Motion
)	
	)	CERTIFICATE OF SERVICE

TMT offers the following actions that TMT considers sufficient to demonstrate that construction of TMT has begun.

1. Testing of GPS equipment
2. Partial survey of an access road
3. Survey of underground fiber optic and electrical lines
4. Inspection for invasive species
5. A “kickoff meeting” between TMT staff and contractors to discuss construction
6. Removal of an ahu.

The determination of whether the TMT has begun construction should rely on common sense and be guided by a reasonable person standard.

Common sense says that merely testing GPS equipment is hardly an activity that can be considered to fall within the boundaries of “construction.”

Similarly, surveying an access road is a non-invasive action that in no way changes the nature or characteristics of the property, i.e. demonstrates no evidence of construction.

Surveying fiber optic and electrical lines that are already in place would more appropriately be termed “taking inventory” than initiating construction.

A walk about to see whether any invasive species are found is similarly a “taking inventory” type of action.

While the meeting between TMT staff and the contractors is termed a “kick off” meeting, kick offs are normally followed by the initiation of the game. The game of constructing the TMT was not begun at that meeting or subsequently.

There was no follow on activity subsequent to the very limited activity argued by the TMT as beginning construction. The actions proffered as a basis for finding construction has begun did

not initiate a continuing construction process. Those actions are isolated visits to the construction site.

For TMT to use the desecration of an ahu as proof construction of TMT was begun only reinforces the nature of the TMT's complete insensitivity to Native Hawaiian objections to the project. The destruction of the ahu is evidence of racism or religious bigotry, not construction.

TMT applied for an extension of the permit after some of the actions at issue now had already been taken. Now TMT is arguing that those same acts are evidence that construction has begun. TMT cannot have it both ways. Either those acts did not demonstrate that construction had begun, so the first extension was necessary, or they did demonstrate construction had begun, so the application for the first extension was unnecessary.

Common sense (and the law) preclude DLNR using the activities they earlier found to be a basis for extending the permit expiration date to also be used to argue that construction already began.

The TMT argument is that these activities taken as a whole provide sufficient evidence to conclude that construction has begun. The more any of the six arguments are found to be insufficient to be considered as supporting the premise that construction has begun, the weaker the TMT position becomes.

A reasonable person evaluating the proffered actions would find each of them to be a de minimis activity not satisfying the requirements of a State-granted permit.

Indeed an examination of each proffered action finds them to be insufficient individually and cumulatively.

Construction has not begun and any further extension is unwarranted.

Dated: October 31, 2021

Lanny Sinkin
Representing the Temple of Lono

CERTIFICATE OF SERVICE

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

1. Temple of Lono Brief in Response to Petitioner's Motion

was duly served upon the following parties, by email, on October 31, 2021

Linda L.W. Chow
 Laure K. Chun
 Deputy Attorneys General
Linda.L.Chow@hawaii.gov
Lauren.K.Chun@hawaii.gov
*Attorneys for the Board of Land
 and Natural Resources*

Jesse K. Souki
 Associate General Counsel
 University of Hawai'i
souki@hawaii.edu
*Attorney for University of
 Hawai'i, Hilo*

Lincoln S.T. Ashida
 Newton J. Chu
 Torkildson, Katz, Moore, &
 Harris
lsa@torkildson.com
njc@torkildson.com
*Attorneys for Perpetuating
 Unique Educational
 Opportunities (PUEO)*

Richard Naiwieha Wurdeman
RNWurdeman@RNWLaw
 Bianca Isaki
bianca.isaki@gmail.com
*Attorneys for the Mauna Kea
 Hui*

J. Douglas Ing
 Brian A. Kang
 Ross Shinyama
 Summer H. Kaiawe
 Watanabe Ing LLP
douging@wik.com
bkang@wik.com
rshinyama@wik.com
skaiawe@wik.com
*Attorneys for TMT
 International
 Observatory, LLC*

Harry Fergerstrom
hankhawaiian@yahoo.com

Richard L DeLeon
kekaukike@msn.com

Mehana Kihoi
uhiwai@live.com

C. M. Kaho'okahi Kanuha
kahookahi@gmail.com

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

Cindy Freitas
hanahanai@hawaii.rr.com

Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
The Temple of Lono

Kalikolehua Kanaele
akulele@yahoo.com

Stephanie-Malia:Tabbada
s.tabbada@hawaiiintel.net

Tiffnie Kakalia
tiffniekakalia@gmail.com

Glen Kila
makakila@gmail.com

Dwight J. Vicente
dwrightjvicente@gmail.com

Brannon Kamahana Kealoha
brannonk@hawaii.edu

William Freitas
kukulukuula@gmail.com

J. Leina'ala Sleightholm
leina.ala.s808@gmail.com

Michael Cain
Michael.cain@hawaii.gov
Custodian of the Records

DATED: _____

/s/ Lanny Alan Sinkin
 lanny.sinkin@gmail.com

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF	)	Case No. HA -22 -02
)	
	)	Cindy Freitas
The Petition of Mauna Kea Hui for Declaratory	)	Brief in Response to
Order Filed May 24, 2021	)	Petitioners' Motion
)	
	)	CERTIFICATE OF SERVICE
_____)	

Permittee University of Hawai'i Hilo (UHH) has claim the following of the General Condition 4 of the Conservation District Use Permit (CDUP) HA-3568. Petition disagree.

1. June 20, 2019 Unpermitted ahu removed.
2. June 25, 2019—Goodfellow Bros, Inc. ("GBI"), the civil contractor for the TMT Project, and M3 Construction Management ("M3"), the construction manager for the TMT Project, 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 Partner 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 on the telescope operations. This was done to confirm on the ground boundaries of the access road and project site;
3. July 8, 2019—Kick-Off Meeting between TMT International Observatory, LLC ("TIO"), GBI, M3, subcontractors, and others to discuss construction procedures, safety protocols, other requirements, and special concerns;
4. July 12, 2019—GBI, M3, and SMA representatives located and surveyed the underground fiber optic and electrical lines in preparation of mobilizing the heavy equipment to the TMT project site to mitigate the risk of damaging the SMA fiber optics.
5. July 15, 2019—The Big Island Invasive Species Committee ("BIISC") inspected TIO construction equipment and vehicles. BIISC provides invasive species compliance certificates; and
6. July 16, 2019—TIO attempted to access the TMT Project site. TIO mobilized 18 vehicles and equipment, including a 980 Loader, D6 Dozer, WA320 Loader, and Mini-Ex/Roller. Persons objecting to the TMT Project blocked TIO's access to the TMT Project site for several months.

Exhibit D
Cindy Freitas Brief

Received
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
Nov 03 2021 14:07

UHH has not met the General Condition 4 of the CDUP HA-3568.

All of the items listed below were done prior to the approval and issuance of the CDUP Application (dated September 2, 2010)

Petitioner asserts that UHH did not meet the General Condition 4 of the CDUP HA-3568

1. In the CDUP HA-3568 under 2.2.1 Cultural Resources reads as follows;

“Mauna Kea is still a focus of many traditional and customary Native Hawaiian cultural practices and beliefs. It is a source of inspiration and object of reverence for many Hawaiians. Ongoing cultural practices involving Mauna Kea include:
Performance of prayer and ritual observances important for reinforcement of an individual’s Hawaiian spirituality, including the ERECTION OF AHU OR SHRINES.” **See Exhibit 1.**
2. In the CDUP HA-3568 Under Table 4: Management Actions Detailing in the Mauna Kea Comprehension Management Plan (CMP). **See Exhibit 2.**
3. Stephanie Nagata Tr. December 8, 2016; Vol 14; Page114:2-25, Page 115:1-25. **See Exhibit 3 reads**, “Has the Office of Mauna Kea Management finalized any rules regarding construction of new Hawaiian cultural features, placement and removal of offerings ?
Office of Mauna Kea Management has not adopted any rules regarding the treatment handling and or removal of any Hawaiian cultural structures. Therefor HRS 711-1107 was committed by the UHH. Also HRS 711-1107 was not in force.
 - a. DLNR administration rules 13-5-2(4) reads “Land Use”
The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land. For purposes of this chapter, harvesting and removing does not include the taking of aquatic life or wildlife that is regulated by state fishing and hunting laws nor the gathering of natural resources for personal, noncommercial use or pursuant to **Article 12, Section 7** of the Hawaii State Constitution or section 7-1, HRS, relating to certain traditional and customary Hawaiian practices.
"Natural resource" means resources such as plants, aquatic life and wildlife, cultural, historic, recreational, geologic, and archeological sites, scenic areas, ecologically significant areas, watersheds, and minerals.
 - b. BLNR FOF & COL reads.. 692. The new structures (ahu) built on or near the TMT Project site are modern practices because they were built within the last two years and appear to be, at least in part, for the purpose of protesting the TMT Project by W. Freitas and others. (Nees) Tr. 12/05/16 at 253:14- 22; Tr. 3/2/17 at 259:4-262:17, 268:13-24. The two ahu were encountered by Rechtman during a field reconnaissance survey of the TMT Project site and the access road on July 7, 2015. (Rechtman) Tr. 12/20/16 at 169:16-21. It has not been conclusively established that the two uprights are in fact on the TMT Project site, but they are near the boundary of the TMT Project site. (Rechtman) Tr. 12/20/16 at 88:6-14
4. In the CDUP HA-3568 under Appendix B – Construction Plan page B-2 to page B-6 had been full fill in the application process by making sure that all was met on September 1, 2010. **See Exhibit 4 a, b, c, d, e, f, and g.**

Exhibit D

Cindy Freitas Brief

a. 1.2 Grading, Underground Utilities, and Foundation. **See Exhibit 4 a**

- b. 1.2.1 Rock Movement Plan. *See Exhibit 4 b*
- c. 1.2.3 Access Way. *See Exhibit 4 c*
- d. Figure B-1: Cross Section of Access Way in Southernmost Cinder Section Overlapping 4 wheel Drive Road. *See Exhibit 4 d*

Figure B-2: General Cross Section of Access Way in Lava Flow Section Overlapping SMA Rd.
- e. B-3: General Cross Section of Access Way in Lava Flow Section Overlapping 4 wheel Drive Rd. *See Exhibit 4 e*
- f. CDUP HA-3568 page 271 “Civil Overall Plan” dated 9-1-10. *See Exhibit 4 f*. Gray Sanders Tr. January 3, 2017; Vol 20; Page 104:6-24. *See Exhibit 4 g*

Therefor the UHH has not met Condition 4 of the CDUP HA-3568. UHH the CDUP HA 3568 should not be extended.

November 3, 2021

_____/s/_____
Cindy Freitas Petitioner

2.0 Existing Conditions

2.1 Ownership

The TMT Observatory and Access Way would be located on Mauna Kea in the MKSR on Hawai'i Island in the State of Hawai'i. The Batch Plant Staging Area is also within the MKSR. The entire 1,288-acre MKSR is owned by the State of Hawai'i and is designated as part of the State of Hawai'i Conservation District Resource subzone and is leased to the University under General Lease S-4191. The building and operation of the TMT Observatory on Mauna Kea will require a sublease of the area from the University. The sublease will be subject to approval first by the TMT Board and University of Hawai'i Board of Regents (UH BOR) followed by approval by BLNR.

2.2 Resources in Project Area

2.2.1 Cultural Resources

Cultural resources is a term that encompasses both physical features, typically referred to as historic properties, as well as cultural practices and beliefs. Each of these resource types are described separately here.

Cultural Practices and Beliefs

The CMP, including the CRMP subplan, as well as the Cultural Impact Assessment (CIA) conducted during the preparation of the EIS for the TMT Project, the CIA prepared for the 2000 Master Plan, and other cultural studies performed on behalf of OMKM provide detailed descriptions of the cultural practices and beliefs surrounding Mauna Kea. Those descriptions are briefly summarized here.

Native Hawaiian traditions state that ancestral *akua* (gods, goddesses, deities) reside within the mountain summit area. These personages are embodied within the Mauna Kea landscape and they are believed to be physically manifested in earthly form as various *pu`u* (hills) and as the waters of Lake Waiau. Because these *akua* are connected to the Mauna Kea landscape in Hawaiian genealogies, and because elders and *akua* are revered and looked to for spiritual guidance in Hawaiian culture, Mauna Kea is considered a sacred place.

Mauna Kea is still a focus of many traditional and customary Native Hawaiian cultural practices and beliefs. It is a source of inspiration and object of reverence for many Hawaiians. Ongoing cultural practices involving Mauna Kea include:

- Performance of prayer and ritual observances important for the reinforcement of an individual's Hawaiian spirituality, including the erection of ahu or shrines.
- Collection of water from Lake Waiau and snow from the summit in general for a variety of healing and other ritual uses.
- Deposition of piko (umbilical cords) at Lake Waiau and the summit peaks of Mauna Kea.

Table 4-1: Management Actions Detailed in the CMP and Subplans

CMP	Subplans	Management Action	Applicability to TMT Project
7.1.1 Native Hawaiian Cultural Resources			
CR-1	NRMP 4.4.2 CRMP 4.3.3 PAP 4.2, 5.2, 6.1	Kahu Kū Mauna shall work with families with lineal and historical connections to Mauna Kea, cultural practitioners, and other Native Hawaiian groups, including the Mauna Kea Management Board's Hawaiian Culture Committee, toward the development of appropriate procedures and protocols regarding cultural issues.	Not Applicable
CR-2	CRMP 2.4.2.1	Support application for designation of the summit region of Mauna Kea as a Traditional Cultural Property, per the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 et seq. in consultation with the larger community.	Not Applicable
CR-3	NRMP 4.4.2 CRMP 4.3.3 PAP 4.2, 5.2, 6.1	Conduct educational efforts to generate public awareness about the importance of preserving the cultural landscape.	Directly Applicable
CR-4	CRMP 4.2.1.1	Establish a process for ongoing collection of information on traditional, contemporary, and customary cultural practices,	Not Applicable
CR-5	CRMP 4.2.1.3 PAP 6.3, 6.8	Develop and adopt guidelines for the culturally appropriate placement and removal of offerings.	Indirect
CR-6	CRMP 4.2.1.5 PAP 2.7.2, 6.3	Develop and adopt guidelines for the visitation and use of ancient shrines.	Indirect
CR-7	CRMP 4.2.1.6	Kahu Kū Mauna shall take the lead in determining the appropriateness of constructing new Hawaiian cultural features.	Indirect
CR-8	CRMP 4.2.1.7	Develop and adopt a management policy for the UH Management Areas on the scattering of cremated human remains.	Indirect
CR-9	CRMP 4.2.1.8 PAP 6.8	A management policy for the cultural appropriateness of building ahu or "stacking of rocks" will need to be developed by Kahu Kū Mauna who may consider similar policies adopted by Hawai'i Volcanoes National Park.	Indirect
CR-10	CRMP 4.3.1 PAP 5.2	Develop and implement a historic property monitoring program to systematically monitor the condition of the historic district and all historic properties, including cultural sites and burials.	Not Applicable
CR-11	CRMP 4.3.7	Complete archaeological survey of the portions of the Summit Access Road corridor under UH management.	Not Applicable
CR-12	CRMP 4.2.7	Consult with Kahu Kū Mauna about establishing buffers (preservation zones) around known historic sites in the Astronomy Precinct, to protect them from potential future development.	Indirect
CR-13	CRMP 4.3.2, 4.3.7	Develop and implement a burial treatment plan for the UH Management Areas in consultation with Kahu Kū Mauna Council, MKMB's Hawaiian Culture Committee, the Hawai'i Island Burial Council, recognized lineal or cultural descendants, and SHPD.	Not Applicable

11:42 1 perspective it has, but we've taken it -- although
 11:42 2 not required we've taken it to Mauna Kea Management
 11:42 3 Board for their review and input.
 11:42 4 Q So you still haven't answered the question,
 11:42 5 a legal yes or no question.
 11:42 6 MR. FLORES: So can I ask the Hearing
 11:42 7 Officer to ask the witness to please answer the
 11:42 8 question correctly?
 11:42 9 HEARINGS OFFICER AMANO: Would you repeat
 11:42 10 question, please?
 11:42 11 MR. FLORES: Yes.
 11:42 12 Q (By Mr. Flores): Has the Office of Mauna
 11:42 13 Kea Management finalized any rules regarding
 11:42 14 construction of new Hawaiian cultural features?
 11:42 15 MR. LUI-KWAN: I'm going to object, vague
 11:42 16 and ambiguous. As to rules, I know the previous
 11:42 17 cross-examiner -- he used rules in a different
 11:42 18 fashion, and I think maybe that might be confusing
 11:42 19 the witness in terms of what they may mean by
 11:42 20 finalizing the rules.
 11:42 21 HEARINGS OFFICER AMANO: Do you understand
 11:43 22 the question?
 11:43 23 THE WITNESS: Not really.
 11:43 24 MR. FLORES: Well, I mean --
 11:43 25 HEARINGS OFFICER AMANO: Maybe you can

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11:43 1 rephrase.
 11:43 2 MR. FLORES: Rephrase.
 11:43 3 Q Has the Office of Mauna Kea Management
 11:43 4 finalized any administrative rules regarding the
 11:43 5 construction of new Hawaiian cultural features?
 11:43 6 A No.
 11:43 7 Q Thank you.
 11:43 8 Has the Office of Mauna Kea Management
 11:43 9 finalized any administrative rules regarding the
 11:43 10 placement and removal of offerings?
 11:43 11 A Can I qualify this? Being those particular
 11:43 12 management items are not in the draft administrative
 11:43 13 rules.
 11:43 14 Q And where are they?
 11:43 15 A They're policies.
 11:43 16 Q When you say "policies", whose policies?
 11:43 17 A They're policies that were required under
 11:44 18 the comprehensive management plan.
 11:44 19 Q Okay.
 11:44 20 So has the Office of Mauna Kea Management
 11:44 21 finalized these policies regarding the placement and
 11:44 22 removal of offerings?
 11:44 23 Exhibit A We have taken to Kahu Ku Mauna, and it's
 11:44 24 and their policy. But as I said that we -- although not
 11:44 25 required by the CMP, we have taken it to the Mauna

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11:44 1 Kea Management Board for their review, input and
 11:44 2 approval.
 11:44 3 Q So what is the next step?
 11:44 4 A Then once -- then we would have a policy in
 11:44 5 place regarding those particular actions.
 11:44 6 Q Who approved those policies?
 11:44 7 A We were taking it to the Mauna Kea
 11:44 8 Management Board for their review and approval.
 11:44 9 Q Has the Mauna Kea Management Board approved
 11:44 10 those policies?
 11:44 11 A Not yet.
 11:45 12 Q Okay. That's the question -- I mean,
 11:45 13 that's the answer I was looking for. Thank you. It
 11:45 14 was really a yes or no answer.
 11:45 15 So has the Office of Mauna Kea Management
 11:45 16 finalized any policies regarding the building of 'ahu
 11:45 17 or standing rocks?
 11:45 18 A No.
 11:45 19 Q Okay.
 11:45 20 I guess I should go back to the first
 11:45 21 questions: Has the Office of Mauna Kea Management
 11:45 22 finalized any policies regarding construction of any
 11:45 23 new Hawaiian culture features?
 11:45 24 A No.
 11:45 25 Q Thank you.

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11:45 1 I'm going to bring your attention to
 11:45 2 Exhibit A-11. And I'll provide you a copy of that.
 11:46 3 Looking at Exhibit A-11 entitled A Cultural
 11:46 4 Resources Management Plan for the University of
 11:46 5 Hawaii management areas on Mauna Kea, Ka'oh'e,
 11:46 6 Hamakua, Hawaii Island, State of Hawaii TMK
 11:46 7 (3)4-4-015, parcel 09 and 12, a sub-plan for the
 11:46 8 Mauna Kea comprehensive management plan.
 11:46 9 And we're -- bring your attention to Page
 11:46 10 5-2. It's the bottom. So Exhibit A-11, page 5-2 and
 11:47 11 you're looking at Table 5.1.
 11:47 12 So once again the table is entitled summary
 11:48 13 of management actions. Is that correct?
 11:48 14 A Yes.
 11:48 15 Q And the page you have before you is page
 11:48 16 5.2 from Exhibit A-11; is that correct?
 11:48 17 A I'm not exactly sure, I'm taking your word
 11:48 18 for it.
 11:48 19 Q That is Exhibit A-11. Are you taking my
 11:48 20 word that it's page 5.2 -- 5-2.
 11:48 21 HEARINGS OFFICER AMANO: No, that it's
 11:48 22 A-11.
 11:48 23 MR. FLORES: Okay. I affirm that it's from
 11:48 24 Exhibit A-11, unless the UH counsel have any
 11:48 25 opposition that it's not at this time.

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- National Pollutant Discharge Elimination System (NPDES) permit. The Project will obtain a Notice of General Permit Coverage (NGPC) for general construction activities. The contractor will prepare a Site-Specific Best Management Practice (BMP) plan and submit it to the State of Hawaii, Department of Health (HDOH) for review prior to construction. The BMP plan will include a Materials Storage/Waste Management Plan and Spill Prevention and Response Plan; the plan will include measures outlined in Sections 3.15.1 and 3.15.2 of the Final EIS, including measures related to Erosion and Water Quality, Solid and Hazardous Materials and Waste, Air Quality and Lighting, and Additional Disturbance and Encroachment. This permit and component plans will comply with CMP Management Action C-2.
- Noise permit and noise variance. TMT's contractor will obtain and comply with both a noise permit and a noise variance, as applicable.
- Oversize and Overweight Vehicles Permit (OOVP). TMT's contractor will obtain and comply with an OOVP, as applicable.

1.1 Schedule

The conceptual Project construction schedule is presented in Table B-1. Project construction could begin as early as 2011 and take approximately seven years to complete.

Table B-1: Anticipated Construction Timeline

Phase	Start	End
Grading and foundation	2011	2013
Access Way	2011	2012
TMT Observatory 13N Site grading	2011	2012
TMT Observatory foundation	2012	2013
Electrical upgrades	2012	2012
Observatory construction	2012	2017
Dome assembly (exterior cranes active)	2013	2015
Internal telescope assembly	2015	2017
Support building construction (including foundation)	2015	2017
Observatory finish	2015	2017
Batch Plant Staging Area restoration/naturalization	2017	2017
Telescope/instrument testing	2017	2018

Source: TMT Observatory Corporation, July 17, 2010.

Drawings illustrating the construction phasing are provided in Attachment A.

Construction activities will take place 12-15 hours a day, seven days a week; however, work times will vary depending on activities and some special operations or construction phases will require longer work hours. Winter weather conditions at the TMT Observatory site will interrupt construction at times, until the dome is completed.

1.2 Grading, Underground Utilities, and Foundation

This section discusses ground level and underground construction activities. The grading of the Access Way and TMT Observatory will take place first, followed by TMT Observatory

foundation work. Plans, which illustrate proposed changes in contours, are included in Attachment B.

1.2.1 Rock Movement Plan

Project construction will require the excavation of rock from the TMT Observatory site and along the Access Way. Along the Access Way, the need to excavate rock is primarily governed by the need to generate a smoothly sloping road and the need to bury utilities within the Access Way. At the TMT Observatory site, excavation is necessary to prepare a level work surface plus place a foundation for the telescope and the observatory dome. TMT and their contractor will prepare a Rock Movement Plan prior to construction in compliance with CMP Management Action C-3 and submit it to the Office of Mauna Kea Management (OMKM) for review and approval. The Rock Movement Plan will detail excavation and grading activities.

Preliminary engineering plans indicate that the total volume of excavated material (“cut” material) will be 64,000 cubic yards. These preliminary engineering plans, which illustrate proposed changes in contours, are included in Attachment B. The estimated cut and fill volumes are based on geotechnical assumptions concerning the subsurface in the area and could change following the completion of geotechnical borings. As summarized in Table B-2, roughly 32,000 cubic yards of the cut material will be reused at the TMT Observatory site or Access Way. An estimated 32,000 cubic yards of material will be excess cut and will be used to provide some restoration of the Batch Plant Staging Area and a portion of which will be stored at a location designated by OMKM for use as determined by OMKM. By using most of the material on the TMT Observatory site and Access Way, that material will be available for later use to restore the TMT Observatory site and the portion of the Access Way exclusively used by TMT during decommissioning.

Table B-2: Estimated Cut and Fill Volumes

Site	Cut (cubic yards)	Fill (cubic yards)
TMT Observatory 13N site	34,000	29,000
Access Way	30,000	3,000
Batch Plant Staging Area	None	30,000
Saved for OMKM Use	NA	2,000

Source: TMT Observatory Corporation, July 17, 2010.

No soil or cinder that originates off the mountain used as fill within the Conservation District. Some courser material from on-island quarries will be transported to the TMT Observatory site and used under concrete foundation slabs as “base course”. Aggregate from on-island quarries will also be used to make the foundation concrete.

1.2.2 Batch Plant

TMT will re-establish a temporary concrete batch plant at the previously utilized “Batch Plant Staging Area”. Prior to utilizing the Batch Plan Staging Area, the site will be cleared of invasive species to the extent practicable, if any are observed by a biologist inspecting the area prior to use. Best management practices (BMPs) will also be installed to (a) limit the potential for the later establishment of invasive species; (b) limit the production of dust and mud; (c) limit and

control stormwater run-on, runoff, and quality; and (d) prevent disturbance of undisturbed areas beyond the previously disturbed batch plant area.

The batch plant will be required to produce roughly 5,900 cubic yards of concrete for the TMT Observatory foundations. As discussed above, this volume is an estimate based on geotechnical assumptions concerning the subsurface in the area and could change following the completion of geotechnical borings.

No mass grading of the Batch Plant Staging Area is planned prior to use of the site as a batch plant other than the storage of excess material from the TMT Observatory site and Access Way within the area. The stored material will be placed such that the entire Batch Plant Staging Area can be utilized (i.e., it will be graded and compacted after placement so that it can be driven over rather than left in a pile). The Project will utilize the area using a layout similar to that used by previous projects that utilized the area as a batch plant. During the Project's use of the Batch Plant Staging Area there will be temporary stockpiles of soil and rock, a concrete batch plant, and construction materials staged within the area.

Once the Project's use of the Batch Plant Staging Area is complete, the stored excess material will be regraded. The excess material will be utilized to restore/naturalize the Batch Plant Staging Area to the degree practicable. A portion or all of the excess material will be spread over a portion of the Batch Plant Staging Area in such a way as to create a rough, more natural surface that could not be driven over. Some of the excess material may be left in a stockpile within the Batch Plant Staging Area depending on OMKM's desires. This restoration of the Batch Plant Staging Area would reduce the size of the Batch Plant Staging Area that could be used for parking and other uses following the construction of the TMT Observatory; however, the restored area could be temporarily reclaimed as a staging area by future projects, if needed.

1.2.3 Access Way

The Access Way has two distinct sections (1) the southernmost portion where the Access Way will follow existing roads on cinder, and (2) the rest of the Access Way where it will primarily follow existing roads on lava flows. These two sections are discussed below.

Southernmost Cinder Section

Generally, grading along the Access Way will be performed to achieve a smooth and level travel surface. In the cinder section, the existing 4-wheel drive road (the "jeep trail") travel surface has degraded over the years and no longer provides a level travel surface. Where the Access Way occurs on the cinder lower slope of Pu,,u Hau,,oki, the Access Way features will be as illustrated in Figure B-1 – a 12 foot wide paved travel way (1 lane), a four foot paved shoulder with drainage channel and guardrail, and slope graded to 2.5:1.

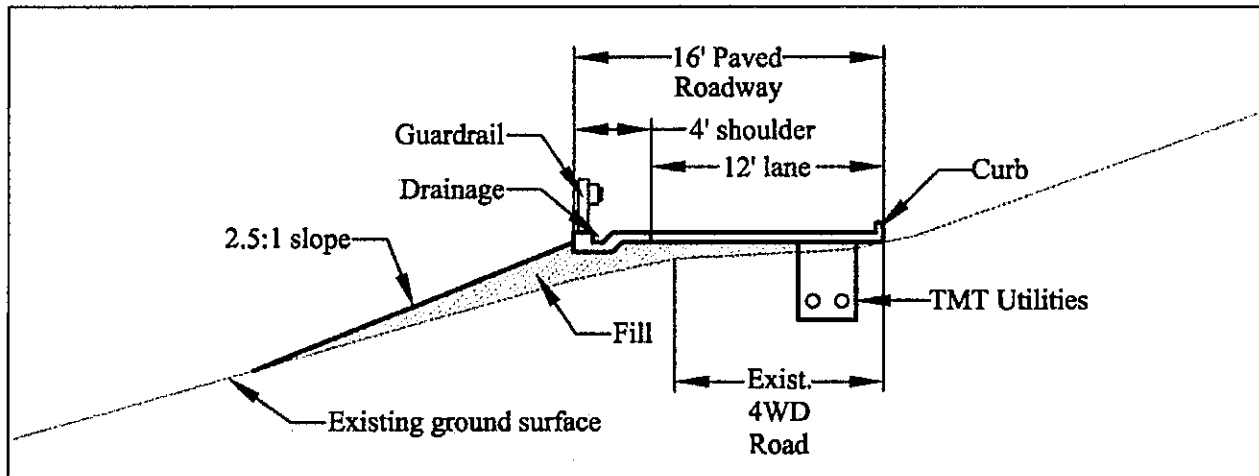


Figure B-1: Cross Section of Access Way in Southernmost Cinder Section Overlapping 4-Wheel Drive Road

Lava Flow Section

Generally, grading along the Access Way will be performed to achieve a smooth travel surface. In the lava flow section the Access Way will follow an existing SMA road and the 4-wheel drive road through Area E. Although the SMA road already provides a smooth travel surface, grading will be done to raise the grade of the travel surface in order to protect the SMA utilities under the roadway, as illustrated in Figure B-2. During early construction activities when sufficient material has not been cut to install the 18-inch cushion over the SMA utilities as shown in the figure, steel plates will be used to cover and protect the SMA utilities until sufficient material is available.

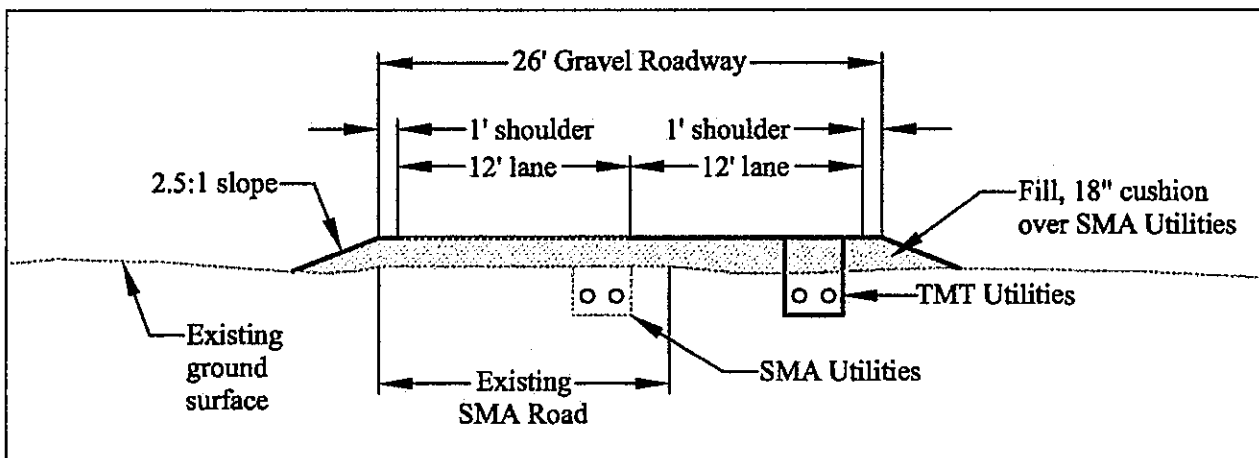


Figure B-2: General Cross Section of Access Way in Lava Flow Section Overlapping SMA Road

In addition to the steps discussed above to protect the SMA utilities where the SMA utilities and TMT utilities run parallel to each other, additional measures will be taken where they cross.

They will cross at two points – (1) where the SMA road branches to a SMA pad on the east side

Exhibit D
Cindy Freitas Brief

of the SMA Area near where the Access Way comes off the cinder cone, and (2) where the SMA road and the 4-wheel drive road split. At those locations additional measures will be taken to protect the SMA utilities, including the use of steel plates and additional cushion so that the TMT utilities can cross over the SMA utilities but still provide the necessary cover over the TMT utilities.

The 4-wheel drive road portion in the cinder cone section will have to be graded to a greater extent because it is not straight and the slope changes dramatically. Throughout the lava flow section, the Access Way features will be as illustrated in Figure B-3 – a 24 foot wide gravel travel way (two lanes), one foot shoulders, and slopes graded to 2.5:1. The slopes beyond the shoulder of the Access Way will vary depending on the topography and steeper embankment slopes may be used depending on geotechnical conditions encountered.

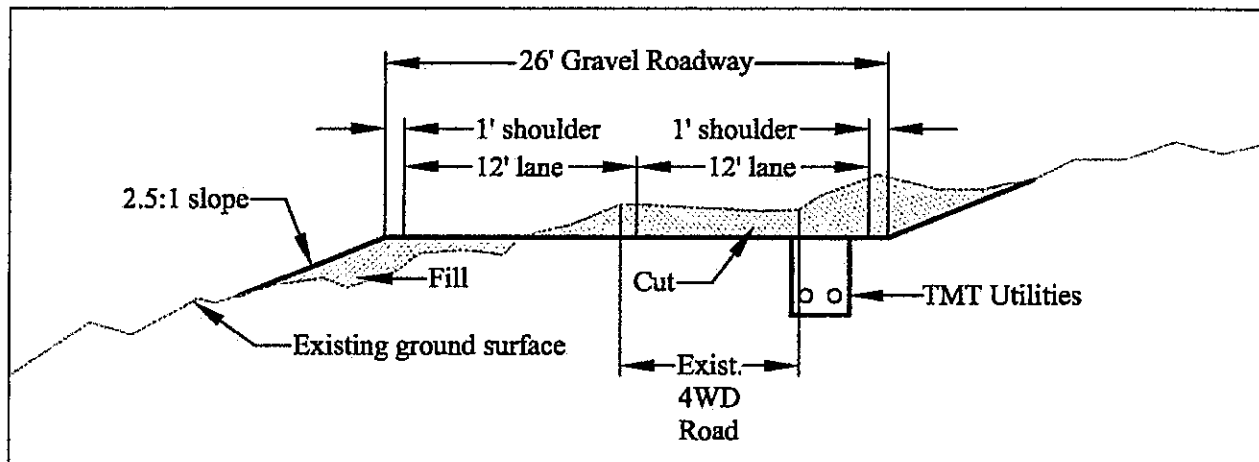


Figure B-3: General Cross Section of Access Way in Lava Flow Section Overlapping 4-Wheel Drive Road

Utilities

A trench for electrical and communications lines will be excavated along the Access Way on one side of the road as illustrated in Figure B-1, Figure B-2, and Figure B-3. The conduits will be encased in concrete per governing code requirements. Excavated material will be used to raise the Access Way road surface where required to improve grades on the road and to provide a smooth and level driving surface where a rough surface from excavation will otherwise be exposed.

1.2.4 TMT Observatory

The limits of grading activities (the area that will be affected by the cut and fill), the existing contours, and proposed contours at the TMT Observatory 13N site are shown in Figure B-4. Grading and foundation details are illustrated on preliminary plans included in Attachment A and B.

11:17 1 details provided here represent the current design?
 11:17 2 It's possible that you might have answered this
 11:17 3 before, but I thought I would try to get the actual
 11:18 4 facts more clearly.
 11:18 5 **A I think I answered it before.**
 11:18 6 **Q** Okay. Okay.
 11:18 7 On the same page in the last paragraph, you
 11:18 8 begin saying:
 11:18 9 The TMT Adaptive Optics (AO) System, you
 11:18 10 say, The TMT Observatory will be the first
 11:18 11 optical/infrared observatory of its size to integrate
 11:18 12 AO into its original design.
 11:18 13 Is that correct?
 11:18 14 **A Correct.**
 11:18 15 **Q** Are you saying that the Giant Magellan and
 11:18 16 the EELT don't use AO in their designs?
 11:19 17 **A I can't speak to how they're integrating it**
 11:19 18 **into the design. I believe they are -- I believe we**
 11:19 19 **may have we may have been doing it first, but that's**
 11:19 20 **a detail. So your question is what now?**
 11:19 21 **Q** In fact, we may not know, you know, what
 11:19 22 the details of their developments are?
 11:19 23 **A Today, I don't.**
 11:19 24 **Q** And then when you say "of its size", do you
 11:19 25 mean, like, specifically 30 meters, or are you

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11:19 1 talking about these large segmented telescopes?
 11:19 2 **A I'm talking about large telescopes in**
 11:19 3 **general.**
 11:19 4 **Q** Not necessarily one just all 30 meters?
 11:19 5 **A Not just 30 meters, but large.**
 11:19 6 **Q** It could be the 39 meters of the EELT or
 11:19 7 the smaller Magellan?
 11:19 8 **A Right, right, right.**
 11:20 9 **Q** On Page 5, that's paragraph number four,
 11:20 10 you say:
 11:20 11 The Calotte dome base, cap, and shutter
 11:20 12 structures will appear rounded and smooth and have a
 11:20 13 reflective aluminum-like exterior coating, is that
 11:20 14 correct?
 11:20 15 **A Correct.**
 11:20 16 **Q** What you mean when you say a "reflective
 11:20 17 aluminum-like exterior coating"?
 11:20 18 **A The dome will be made of steel, plain**
 11:20 19 **common steel. It will be painted with a reflective**
 11:20 20 **paint that will have a metallic component in the**
 11:20 21 **paint to make the paint reflective, and it will look**
 11:20 22 **something like an aluminized surface.**
 11:20 23 **Q** Okay.
 11:20 24 **Q** So if we didn't really have an aluminum skin?
 11:20 25 **A No.**

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11:20 1 **Q** And what kind of appearance will we -- will
 11:21 2 this thing look like? In other words, would it be --
 11:21 3 it's a -- would it be a shiny kind of, glossy kind of
 11:21 4 finish, would it be a buffed, dull kind of surface,
 11:21 5 what -- or have you decided?
 11:21 6 **A We haven't decided. Your question is**
 11:21 7 **well-founded. So if you look at Exhibit C-3, you see**
 11:21 8 **a general representation. It's not highly polished**
 11:21 9 **like a mirror --**
 11:21 10 **Q** Yes.
 11:21 11 **A -- a real mirror, and it's not very dull.**
 11:21 12 **Q** Although you say somewhere, I believe, that
 11:21 13 it will reflect something about the sky or the colors
 11:21 14 of sky or the colors of the ground or something like
 11:21 15 that?
 11:21 16 **A Right. It will be reflective enough so**
 11:21 17 **that it will reflect the colors of sky, but it won't**
 11:21 18 **be so highly polished and reflective that it's like a**
 11:21 19 **mirror --**
 11:21 20 **Q** I see.
 11:21 21 **A -- and the exact level of reflectivity or**
 11:21 22 **specularity will be decided when we choose the paint**
 11:22 23 **with the contractor.**
 11:22 24 **Q** I see.
 11:22 25 So you didn't happen to bring a sample of

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11:22 1 this --
 11:22 2 **A No.**
 11:22 3 **Q** -- or possibilities of what this outside
 11:22 4 surface might look like with you?
 11:22 5 **A No.**
 11:22 6 **Q** On the bottom of Page 7, you say:
 11:22 7 Finally, some site preparation for the TMT
 11:22 8 groundbreaking was done in 2015 also within the TMT
 11:22 9 site boundaries.
 11:22 10 Now, I believe that early on you testified
 11:22 11 that a grading permit had been obtained by the
 11:22 12 contractor to do this work? Is that correct?
 11:22 13 **A For the groundbreaking?**
 11:22 14 **Q** Yes.
 11:22 15 **A Yes. The grading --**
 11:22 16 **Q** And the accessway, I believe, he's already
 11:22 17 testified?
 11:22 18 **A Well, I believe that grading permit was for**
 11:22 19 **the entire civil package that included the**
 11:22 20 **groundbreaking and all of the work in the civil**
 11:23 21 **package including the accessway --**
 11:23 22 **Q** I see.
 11:23 23 **A -- and the rough grading of the site. It's**
 11:23 24 **a single grading permit.**
 11:23 25 **Q** So my question to you is: Is the -- was

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Case No. HA-22-02

CERTIFICATE OF SERVICE

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

1. Cindy Freitas Breif in Response to Petitioner's Motion

Was duly served upon the following parties, by email, on November 3, 2021

Linda L.W. Chow
Laure K. Chun
Deputy Attorneys General
Linda.L.Chow@hawaii.gov
Lauren.K.Chun@hawaii.gov
*Attorneys for the Board of Land
and Natural Resources*

Jesse K. Souki
Associate General Counsel
University of Hawai'i
souki@hawaii.edu
*Attorney for University of
Hawai'i, Hilo*

Lincoln S.T. Ashida
Newton J. Chu
Torkildson, Katz, Moore, &
Harris
lsa@torkildson.com
njc@torkildson.com
*Attorneys for Perpetuating
Unique Educational
Opportunities (PUEO)*

Richard Naiwieha Wurdeman
RNWurdeman@RNWLaw
Bianca Isaki
bianca.isaki@gmail.com
*Attorneys for the Mauna Kea
Hui*

J. Douglas Ing
Brian A. Kang
Ross Shinyama
Summer H. Kaiawe
Watanabe Ing LLP
douging@wik.com
bkang@wik.com
rshinyama@wik.com
skaiawe@wik.com
*Attorneys for TMT
International
Observatory, LLC*

Harry Fergerstrom
hankhawaiian@yahoo.com

Richard L DeLeon
kekaukike@msn.com

Mehana Kihoi
uhiwai@live.com

C. M. Kaho'okahi Kanuha
kahookahi@gmail.com

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

Cindy Freitas
hanahanai@hawaii.rr.com

Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
The Temple of Lono

Kalikolehua Kanaele
akulele@yahoo.com

Stephanie-Malia:Tabbada
s.tabbada@hawaiiintel.net

Tiffnie Kakalia
tiffniekakalia@gmail.com

Glen Kila
makakila@gmail.com

Dwight J. Vicente
dwightjvicente@gmail.com

Brannon Kamahana Kealoha
brannonk@hawaii.edu

William Freitas
kukulukuula@gmail.com

J. Leina'ala Sleightholm
leina.ala.s808@gmail.com

Michael Cain
Michael.cain@hawaii.gov
Custodian of the Records

DATED: November 3, 2021

_____/s/_____
Cindy Freitas Petitioner

1000352.19

WATANABE ING LLP
A Limited Liability Partnership

J. DOUGLAS ING 1538-0
ROSS T. SHINYAMA 8830-0
SUMMER H. KAIAWE 9599-0

First Hawaiian Center
999 Bishop Street, Suite 1250
Honolulu, Hawai'i 96813
Telephone No. (808) 544-8300
E-Mails: douging@wik.com; rshinyama@wik.com;
skaiawe@wik.com

Attorneys for
TMT INTERNATIONAL OBSERVATORY LLC

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

TMT INTERNATIONAL OBSERVATORY
LLC'S MEMORANDUM IN OPPOSITION
TO MAUNA KEA HUI'S MOTION TO
REOPEN HEARING TO HEAR MOTION
TO CONFIRM NON-COMPLIANCE WITH
CONDITION NO. 4, OR,
ALTERNATIVELY, PETITION FOR
DECLARATORY ORDERS
CONCERNING THE SAME;
DECLARATION OF FENGCHUAN LIU;
DECLARATION OF COUNSEL;
EXHIBITS "A" - "C"; CERTIFICATE OF
SERVICE

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TMT INTERNATIONAL OBSERVATORY LLC’S MEMORANDUM IN OPPOSITION TO MAUNA KEA HUI’S MOTION TO REOPEN HEARING TO HEAR MOTION TO CONFIRM NON-COMPLIANCE WITH CONDITION NO. 4, OR, ALTERNATIVELY, PETITION FOR DECLARATORY ORDERS CONCERNING THE SAME

I. INTRODUCTION

TMT International Observatory LLC (“TIO”) opposes Mauna Kea Anaina Hou, Kealoha Pisciotta, Clarence Kukauakahi Ching, Deborah J. Ward, Paul K. Neves and KAHEA: The Hawaiian Environmental Alliance’s (collectively, “Petitioners”) Motion to Reopen Hearing to Hear Motion to Confirm Non-Compliance with Condition No. 4, or, Alternatively, Petition for Declaratory Orders Concerning the Same (“Motion”).

On October 20, 2021, the Board of Land and Natural Resources (“BLNR”) issued Minute Order No. 1, stating that BLNR will consider the Motion solely as a petition for a declaratory ruling pursuant to Hawai‘i Revised Statutes (“HRS”) § 91-8 and Hawai‘i Administrative Rules (“HAR”) § 13-1-27 rather than a motion for reconsideration of the Findings of Fact, Conclusions of Law and Decision and Order (“D&O”) granting Conservation District Use Permit No. HA-3568 for the TMT Project (the “CDUP”).¹

¹ While this Memorandum in Opposition therefore only addresses the Petitioners’ request for a declaratory ruling, TIO notes for the record that BLNR’s determination that there is no legal basis to “reopen” the contested case hearing is correct. Petitioners participated in the sixteen-month contested case hearing resulting in the CDUP, which was affirmed by the Hawai‘i Supreme Court in its entirety over three years ago. *See In the Matter of Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568*, 143 Hawai‘i 379, 431 P.3d 752 (2018) (“*Mauna Kea III*”). Petitioners do not seek reconsideration of the CDUP; however, even if they were to do so, under any measure, the time for reconsidering the CDUP has long passed. Nor is there any information not previously available that would affect the issuance of the CDUP or a substantial injustice that would merit a request to reconsider the CDUP itself. *See HAR* § 13-1-39(a). To the extent that Petitioners seek further review of BLNR’s determination that there is no basis to reopen the contested case hearing, TIO reserves all arguments on this issue.

As discussed in detail below, BLNR should deny the Petition in its entirety because:

1. Petitioners' request for a declaratory order is procedurally defective, because under established law, the declaratory ruling procedure cannot be used to review previously-made agency decisions;
2. Even assuming BLNR considers the substance of the Petitioners' allegations, permittee the University of Hawai'i Hilo ("UH Hilo"), through TIO's work done and/or construction done at the TMT Project site, timely and properly met the requirements of Condition No. 4; and
3. Since Petitioners (individually or as members of various organizations) actively participated in the protests and/or coordinated with others engaging in the protests to block access to the TMT Project site (and thus contributed to the delays that Petitioners now complain of), the Petition should be denied on principles of equity and fairness.

II. ARGUMENT

A. **Petitioners' request for a declaratory ruling must be denied because it is an attempt to review an already-made agency decision.**

Petitioners seek a declaratory ruling that UH Hilo "has not initiated construction so as to comply with Condition No. 4." *See* Petition at 8. This request must be denied.

Hawai'i Administrative Rules § 13-1-27(a) provides that "the board may issue a declaratory order regarding the applicability of any statutory provision or of any rule or order of the board." Hawai'i law is clear, however, that the administrative declaratory ruling process is not a proper means to review specific agency decisions that have already been rendered. *See Citizens Against Reckless Development v. Zoning Bd. of Honolulu*, 114 Haw. 184, 196, 159 P.3d 143, 155 (2007) ("*Card*"). As the Hawai'i Supreme Court determined in *Card*, this is because

the declaratory order statute (which is substantively identical² to the relevant provisions of HAR § 13-1-27(a)), plainly makes clear that the procedure is “meant to provide a means of seeking determination of whether and in what way some statute, agency rule or order *applies* to the factual situation raised by an interested person.” *See Card*, 114 Haw. at 196-197, 159 P.3d. at 155-156. The Court therefore concluded that:

Reading HRS § 91-8 in a common sense fashion, and bearing in mind the plain meaning of the term “applicability,” it cannot seriously be maintained that the procedure was intended to review already-made agency decisions. For such decisions, like the DPP Director's issuance of the CUP to Wal-Mart, the agency has already spoken as to the “applicability” of the relevant law to the factual circumstances at hand—implicitly or explicitly it has found the relevant legal requirements to be met. There is no longer a question of how the relevant laws, in this case the LUO, “apply.”

Use of the declaratory ruling procedural device only makes sense where the applicability of relevant law is unknown, either because the agency has not yet acted upon particular factual circumstances, or for some other reason the applicability of some provisions of law have not been brought into consideration.

Card, 114 Haw. at 197, 159 P.3d at 156 (footnote and citation omitted) (emphasis added).

Turning to this matter, on May 4, 2021, the BLNR chairperson approved UH Hilo’s April 28, 2021 request to the Office of Conservation and Coastal Lands to find that UH Hilo met Condition No. 4. *See* Petition at Ex. 3. Accordingly, it is undisputed that BLNR has already made a decision that UH Hilo met Condition No. 4, and there is no pending question of how BLNR “applies” Condition No. 4 of the CDUP to the current factual situation regarding the “work done or construction . . . done on the land” because BLNR has already spoken.

² Hawai‘i Revised Statutes (“HRS”) § 91-8 provides in relevant part that “[a]ny interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency.”

Accordingly, pursuant to *Card*, Petitioners' request for a declaratory ruling to ostensibly find that UH Hilo "has not initiated construction so as to comply with Condition No. 4" must be denied because it is an improper request to review an already-made agency decision given BLNR's determination on the applicability (and fulfillment) of Condition No. 4.³

B. Even assuming the Board considers the Petitioners' substantive arguments, the Petition must be denied.

1. UH Hilo (through TIO) timely met the Condition No. 4 requirement 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[.]"

Although BLNR should deny the Petition for the foregoing reasons, even assuming BLNR considers the Petitioners' substantive arguments, the Petition must still be denied.

Petitioners essentially argue that any "work done" or "construction to be done on the land" are synonymous in the sense that "ground-disturbing work associated with the building of the TMT" is required for both. *See* Petition at 4.

As an initial matter, Condition No. 4 does not state -- that "[a]ny work done, or construction to be done, on the land" shall be initiated within two years of the approval of the use (commas and emphases added). Instead, Condition No. 4 plainly provides that "[a]ny work done or construction to be done on the land" shall be initiated within the prescribed period. (Emphasis added).

Thus, the clause "any work done" is substantively distinct from "construction to be done on the land," since it is a cardinal rule of statutory construction that "courts are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as

³ TIO reserves, and does not waive, arguments on the other possible non-exclusive bases under HAR § 13-1-27(f) in which BLNR may refuse to issue a declaratory order, including, but not limited to, that the issuance of the declaratory order may adversely affect the interests of the Board in litigation that may reasonably be expected to arise, and/or for other good cause.

superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute.” *State v. Kaakimaka*, 84 Hawai‘i 280, 289-90, 933 P.2d 617, 626-27 (1997) (citation omitted). Petitioners’ flawed interpretation, which renders the phrase “[a]ny work done” as superfluous and without a separate meaning, must be rejected.

Moreover, the CDUP conditions, when read as a whole as required, also demonstrate that the scope of “any work done” within the context of Condition No. 4 is intended to be distinct from “construction to be done on the land.” This is because the next condition in the CDUP (Condition No. 5) provides that “[b]efore proceeding with any work authorized by the Board,” UH Hilo is required to submit copies of the construction and grading plans and specifications to the Chairperson or designee for approval (emphasis added). The Board’s decision to only use the clause “work” in Condition No. 5 instead of “any work or construction to be done on the land” (as with Condition No. 4) is material.

The same general principles that apply to statutory interpretation also apply to the interpretation of administrative rules. *Allstate Ins. Co. v. Ponce*, 105 Hawai‘i 445, 454, 99 P.3d 96, 105 (2004) (citation omitted). When construing a statute, “laws *in pari materia*, or upon the same subject matter, shall be construed with reference to each other.” HRS § 1-16; *State v. Villeza*, 85 Hawai‘i 258, 273, 942 P.2d 522, 537 (1997) (citing *Richardson v. City and County of Honolulu*, 76 Hawai‘i 46, 55, 868 P.2d 1193,1202 (1994) (internal brackets omitted)). “[W]here a statute with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed.” *State v. Rodgers*, 68 Haw. 438, 442, 718 P.2d 275, 277 (1986) (ellipses and citations omitted).

Thus, the Board's decision to refer to "work" in the relevant clause in Condition No. 5 must be presumed to be intentional and is significant to show that the Board intended "work" to be distinct from the clause "construction to be done on the land" in Condition No. 4.

This reading is consistent with common practice with respect to the development of large telescope projects, such as the TMT Project, which require extensive on-site (and site-related) coordination, testing, and surveying work (among other work), which do not necessarily require ground-disturbing activities in advance of actual physical construction on the land. *See* Declaration of Fengchuan Liu, attached hereto ("Liu Decl.").

Condition No. 5 reasonably contemplates that prior to such site-related "work," UH Hilo was required to submit construction and grading plans to the BLNR Chairperson to ensure consistency with the conditions of the CDUP. Stated another way, by using the word "work" in Condition No. 5, BLNR reasonably and prudently sought to assure that even prior to ground-disturbing construction on the land for the TMT Project, on-site and site-related "work," such as on-site testing and surveying, would be consistent with the CDUP.

UH Hilo submitted the required project construction and grading plans (and specifications) to BLNR on February 4, 2019, and on June 17, 2019, BLNR issued a notice to proceed. *See* Liu Decl.; Letter from BLNR to UH Hilo dated June 19, 2019, attached as Exhibit "A". Thereafter, TIO commenced the on-site and site-related "work" and/or construction on the land pursuant to Condition No. 4. *See* Liu Decl.; Petition at Exs. 1-3. As noted in UH Hilo's correspondence to BLNR in support of compliance with Condition No. 4, this work and/or construction on the land included, among other activities, the following:

- June 20, 2019 - Unpermitted ahu removed near project site.⁴
- June 25, 2019 - Meeting at project site with Goodfellow Bros, Inc. (“GBI”), the civil contractor for the TMT Project, and M3 Construction Management (“M3”), the construction manager for the TMT Project, 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 on Mauna Kea was completed on the same date for accuracy in comparison to the owner-furnished survey.
 - Personnel from the SMA and James Clerk Maxwell radio telescopes also joined the construction crew on-site on the same date to coordinate the GPS system and verify the impact on the telescope operations. This was done to confirm on the ground boundaries of the access road and project site.
- July 8, 2019 - All consultants and contractors met for a pre-construction meeting at the Waikoloa Marriott to discuss procedures, safety, and requirements for the TMT Project.
- July 12, 2019—GBI, M3, and SMA representatives located and surveyed the underground fiber optic and electrical lines on Mauna Kea in preparation of mobilizing the heavy equipment to the TMT project site to mitigate the risk of damaging the SMA fiber optics.

⁴ Even under the Petitioners’ erroneous interpretation of Condition No. 4, the removal of the unpermitted ahu plainly constituted ground-disturbing “construction . . . on the land,” and therefore BLNR, if it considers the Petitioners’ substantive arguments, may properly find that UH Hilo, through TIO, met the extended deadline on those grounds alone. Apparently realizing this, Petitioners object to the removal of the unpermitted ahu. *See* Petition at 5. This objection, however, was previously considered (and rejected) by BLNR during the contested case hearing for the TMT Project. *See* D&O at FOF 690, 692-693, 701, 791, and Conclusion of Law (“COL”) 383 (finding that two ahu were built in 2015 on or near the TMT Project site as “modern” and “contemporary” practices to protest and interfere with the project; “were not placed in accordance with any recognized traditional practice”; and concluding that this protest in the form of building “in the right-of-way of another person is obviously not an accepted native Hawaiian tradition and custom,” and “[n]or does it conform to the *PASH* requirement that practices be reasonable.”) The Hawai‘i Supreme Court in *Mauna Kea III* favorably cited these findings and conclusion. *See Mauna Kea III*, 143 Hawai‘i at 396, 431 P.3d at 769 (noting that “The BLNR concluded that the two ahu built on the Access Way in 2015 as protests against the TMT did not constitute a traditional and customary right of practice, and in any event did not meet PASH’s requirement of reasonableness.” (Citation omitted)). The removal of the unpermitted ahu were therefore proper and consistent with the CDUP and applicable law.

- July 16, 2019—TIO attempted to access the TMT Project site. TIO mobilized 18 vehicles and equipment, including a 980 Loader, D6 Dozer, WA320 Loader, and Mini-Ex/Roller. Persons objecting to the TMT Project blocked TIO's access to the TMT Project site.

See Liu Decl.; Petition at Exs. 1-3.

Given the foregoing, and under applicable law, the clause “any work done” is distinct from the clause “construction to be done on the land” in Condition No. 4, and TIO timely initiated “work” and/or “construction on the land” for the TMT Project to satisfy the condition.⁵

Petitioners' arguments for a contrary reading of Condition No. 4 are unpersuasive, and Petitioners offer no legal authority to support their narrow definition of “work” as requiring “ground-disturbing” activities. Petitioners, for example, cite to the *Oxford English Dictionary* definition of “construction” to argue that since that dictionary defines “construction” to mean “building of something, typically a large structure,” the term “work” must also be construed as requiring “ground disturbing work”. See Petition at 4 (citing *Lexico.com by Oxford English Dictionary*).

Petitioners' argument is illogical and unsupported given that the same dictionary defines “work” as, among other definitions, “[a]ctivity involving mental or physical effort done in order to achieve a purpose or result,” and “[a] task or tasks to be undertaken; something a person or thing has to do.” See *work, Lexico.com by Oxford English Dictionary*, <https://www.lexico.com/en/definition/work?locale=en> (Emphasis added). Thus, under Petitioners' own authority, “work” does not necessarily require simultaneous physical change or

⁵ Thus, even assuming BLNR concludes the Condition No. 4 should be interpreted as requiring both “work” and “construction” to be “done on the land,” TIO timely met the extended construction deadline, since much of the described “work” (including surveying, testing, etc.) was indisputably “done on the land”.

activity, but includes activities involving mental or physical “efforts” and “tasks” “to achieve” a subsequent result.

Similarly, the other major dictionary often cited by the Hawai‘i Supreme Court (the Merriam-Webster Dictionary)⁶ defines “construction” as “the act or result of constructing, interpreting, or explaining,” as well as “the process, art, or manner of constructing something[.]” See *construction*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/construction> (emphasis added). Thus, even under a commonly-accepted definition of “construction,” the word encompasses more than an act of physically changing something -- such as ground-disturbing activity -- and also encompasses an “interpretation” and “process,”⁷ which clearly occurred with respect to the TMT Project in timely compliance with Condition No. 4.⁸

⁶ See, e.g., *State v. Bright*, 147 Hawai‘i 164, 170, 465 P.3d 611, 617 (2020) (citing both the Oxford English Dictionary and the Merriam-Webster Dictionary for the definition of the word “neutral”).

⁷ TIO notes that this definition is also consistent with the definition of “construction” under HRS § 103D-104, which relates to public procurement. Under that statute, “construction” means “the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.” Accordingly, under this definition, “construction” encompasses more than “ground-disturbing activity” and also includes the “process” of improving real property and the routine maintenance of real property.

⁸ Similarly, the Merriam-Webster dictionary defines “work” as, among other definitions, “to perform or carry through a task requiring sustained effort or continuous operations,” and “to function or operate according to plan or design”. See *work*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/work>. The surveying and other site work for the TMT Project were indisputably part of efforts to “function or operate according to [the] plan and design” for the TMT Project approved by BLNR.

2. BLNR was not estopped from considering the work that had occurred in connection with the TIO Project prior to July 30, 2019 as a basis for determining that UH Hilo timely complied with Condition No. 4.

Petitioners erroneously argue that BLNR was “judicially estopped” from relying upon work done in connection with the TMT Project as a basis for its May 4, 2021 determination that UH Hilo timely met Condition No. 4 because BLNR also cited some of that work in connection with its July 30, 2019 approval of UH Hilo’s request to extend the time to comply with Condition No. 4. *See* Petition at 3-4.

Under the doctrine of judicial estoppel, a “party” is not permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by the party. *See Lee v. Puamana Comm. Assoc.*, 109 Hawai‘i 561, 576, 128 P.3d 874, 889 (2006). Accordingly, the doctrine of judicial estoppel applies -- if at all -- to a party, and not a decision-maker, such as BLNR here. Even assuming the doctrine applies to BLNR, however, BLNR was not “judicially estopped” from concluding that UH Hilo timely complied with Condition No. 4.

As the Hawai‘i Supreme Court noted in *Lee* (a decision subsequent to the 1983 *Rosa* case relied upon by Petitioners), the application of the doctrine of judicial estoppel requires the following considerations:

First, a party’s later position must be “clearly inconsistent” with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party’s earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled[.] Absent success in a prior proceeding, a party’s later inconsistent position introduces no risk of inconsistent court determinations, and thus poses little threat to judicial integrity. A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

See Lee, 109 Hawai‘i at 576, 128 P.3d at 889 (citing *New Hampshire v. Maine*, 532 U.S. 742, 750-751 (2001) (citations and quotation marks omitted)).

None of these considerations apply to BLNR’s determination that UH Hilo complied with Condition No. 4. First, BLNR’s May 4, 2021 determination that UH Hilo timely complied with Condition No. 4 is not inconsistent at all (much less “clearly inconsistent”) with its July 30, 2019 approval of an extension of time to comply with the condition. Nothing in BLNR’s July 30, 2019 approval of the extension request indicates that BLNR rejected or disagreed with UH Hilo’s assertion and express reservation that TIO’s work on the TMT Project since BLNR issued the notice to proceed constituted “work done or construction to be done on the land” for purposes of compliance with Condition No. 4. *See* Petition at Ex. 2. Thus, BLNR’s May 4, 2021 concurrence that UH Hilo timely complied with Condition No. 4 was not “clearly inconsistent” with BLNR’s earlier decision to grant the extension.

The second factor cited in *Lee* (whether a party has succeeded in persuading a court to accept that party’s earlier position) demonstrates that judicial estoppel does not apply to BLNR, because that factor relates to actions by parties that may influence a court or decision-maker. Nevertheless, it is clear that BLNR did not take a clearly inconsistent position (or was persuaded to do so), nor was BLNR or any party “misled” given UH Hilo’s (and TIO’s) clear and unambiguous assertion and reservation that “work done or construction to be done on the land” had timely taken place in compliance with Condition No. 4.

Applying the third factor cited in *Lee*, since BLNR did not take an inconsistent position at any time with respect to Condition No. 4, there was no “unfair advantage” or “unfair detriment”

to anyone -- BLNR, UH Hilo, TIO or Petitioners from BLNR's conclusion that UH Hilo timely complied with Condition No. 4.⁹

Moreover, for similar reasons, even if Petitioners belatedly attempt to argue that judicial estoppel should apply to UH Hilo and TIO, BLNR must find that the doctrine does not apply. As noted above, both UH Hilo and TIO, in their respective correspondence on this issue, expressly and repeatedly stated their positions that Condition No. 4 had in fact been timely met, and both UH Hilo and TIO did not waive their positions on this issue. *See* Petition at Ex. 1 (UH Hilo letter to BLNR dated July 30, 2019 stating in part, "As described below, and based on information provided by [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," and that the request for an extension was made without "waiving the foregoing," and "out of an abundance of caution"); Petition at Ex. 2 (Letter from TIO counsel to UH Hilo noting that TIO believed "it has in fact 'initiated' 'work' and/or 'construction' at the TMT Project site; the request for an extension was being made "out of an abundance of caution"; and TIO "does not waive, and expressly preserves, its position that work has been initiated in compliance with the deadline in General Condition No. 4[.]").

⁹ Since BLNR did not take an inconsistent position with respect to UH Hilo's (and TIO's) assertion and express reservation that "work done or construction to be done on the land" had taken place, BLNR could not have "wilfully caused" another person to erroneously believe otherwise (and others could not have reasonably relied on such an erroneous belief); accordingly, the doctrine of equitable estoppel also does not apply against BLNR. *See Maria v. Freitas*, 73 Haw. 266, 273, 832 P.2d 259, 264 (1992) (noting that equitable estoppel requires proof that one person "wilfully caused another person to erroneously believe a certain state of things, and that person reasonably relied on this erroneous belief to his or her detriment"); *State v. Zimring*, 58 Haw. 106, 125, 566 P.2d 725, 738 (1977) (rejecting application of equitable estoppel against the State where State claimed an interest in a parcel seven years after plaintiffs purchased parcel). Moreover, it is well-recognized that the doctrine of equitable estoppel against the government is not favored, and the doctrine may not be used in such a way as to hinder the state in the exercise of its sovereign power. *See Garner v. State Dept. of Education*, 122 Hawai'i 150, 159, 223 P.3d 215, 224 (App. 2009).

Given the foregoing, UH Hilo and TIO did not take “clearly inconsistent” positions regarding timely compliance with Condition No. 4, and BLNR could not have been misled by UH Hilo’s and TIO’s representations. As such, there was clearly no “unfair advantage” or “unfair detriment” to anyone created by UH Hilo’s and TIO’s statements on this issue.¹⁰

3. BLNR’s approval of UH Hilo’s notice of compliance with Condition No. 4 did not constitute improper agency “rulemaking”.

Petitioners also argue that UH Hilo’s April 28, 2021 letter notifying BLNR of “work done or construction . . . done on the land” was a “short-cut process[]” for determining compliance with Condition No. 4, and that BLNR’s determination that the condition had been met constituted improper agency “rulemaking”. *See* Petition at 6-7. Petitioners’ arguments are groundless.

Petitioners fail to explain how UH Hilo’s notification to BLNR of compliance with Condition No. 4 via its letter dated April 28, 2021 constitutes a “short-cut process”. Nothing in the CDUP (or any legal authority) required UH Hilo to file a petition for declaratory order to assert compliance with the condition as Petitioners seem to suggest. *See* Petition at 6. Instead, UH Hilo did exactly what should have been done with respect to notifying BLNR of compliance

¹⁰ For substantially the same reasons, the doctrine of judicial admissions does not apply to UH Hilo and TIO. A judicial admission is “a formal statement . . . in the course of a judicial proceeding that removes an admitted fact from the field of controversy [and] . . . is a voluntary concession of fact by a party during judicial proceedings.” *Lee*, 109 Hawai‘i at 573, 128 P.3d at 886 (quoting *Han v. Yang*, 84 Hawai‘i 162, 174 n.18, 931 P.2d 604, 616, n.18 (App. 1997) (brackets omitted)). Neither UH Hilo nor TIO admitted or conceded at any time that UH Hilo did not timely comply with Condition No. 4, and in fact, both TIO and UH Hilo vigorously asserted otherwise.

with the condition pursuant to the CDUP: UH Hilo timely notified BLNR in writing of compliance with the condition and the reasons therefor.¹¹

Nor did BLNR's approval of UH Hilo's notice of compliance with Condition No. 4 constitute agency "rulemaking". Petitioners' entire analysis on this issue rests on a false premise, because their erroneous argument that BLNR engaged in agency "rulemaking" is based on a gross mischaracterization of BLNR's actions in approving the notice. BLNR's approval of UH Hilo's April 28, 2021 notice was made pursuant to Condition No. 4 of the CDUP. BLNR's approval was not to "evade requirements that the Board review extensions beyond the first request," as Petitioners argue (Petition at 6), because the UH Hilo's April 28, 2021 notice plainly did not seek a further extension. *See* Petition at Ex. 3. Nor did BLNR's approval of UH Hilo's notice of compliance with Condition No. 4 somehow result in the "issue[ance] [of] a de facto revision of permit conditions," as Petitioners further argue. *See* Petition at 7.

The provisions and requirements of Condition No. 4 remained the same before and after BLNR's approval of UH Hilo's notice of compliance with the condition. Simply stated, BLNR determined that UH Hilo complied with an existing condition of the CDUP. BLNR's act in

¹¹ Petitioners also appear to take issue with the form of UH Hilo's notification to BLNR of compliance with Condition No. 4. *See* Petition at 8 (arguing that UH Hilo's "submissions are deficient to meet requirements of the rule and the DLNR chairperson clearly exceeded her authority in approving [UH Hilo's] request.") Since Petitioners fail to articulate any reasons whatsoever for their claim that the notice was somehow "deficient," BLNR must disregard the argument. Nevertheless, UH Hilo's April 28, 2021 letter sufficiently articulated the reason for the notice and the specific work completed by TIO. *See* Petition at Ex. 3. Moreover, it is undisputed that BLNR had previously received and reviewed substantial information regarding the TMT Project, including, but not limited to, the July 29, 2019 and July 30, 2019 prior correspondence regarding Condition No. 4, as well as the construction and grading plans submitted by UH Hilo on February 4, 2019 and approved by BLNR on June 17, 2019. *See* Liu Decl.

approving the notice did not result in a “revision” of Condition No. 4 (or any other provision of the CDUP).¹²

Accordingly, instead of engaging in rulemaking, which “affects the rights of individuals in the abstract,” BLNR properly exercised its authority under the CDUP and applicable law to approve the notice of compliance with Condition No. 4 -- a concrete action that specifically affected UH Hilo and TIO. *See In re Water Use Permit Applications*, 94 Hawai‘i 97, 169, 9 P.3d 409, 481 (2000) (quoting 1 Kenneth C. Davis, *Administrative Law Treatise* § 5.01 (1958) (Emphasis added)).

4. BLNR was not required to hold a contested case hearing on UH Hilo’s notice of compliance with Condition No. 4.

For similar reasons, BLNR was not required to hold a contested case hearing on UH Hilo’s April 28, 2021 notice of compliance with Condition No. 4 as Petitioners suggest. *See* Petition at 7 (“[UH Hilo’s] de facto request for revision of permit conditions should be brought before the Board as part of contested case proceedings, or at a minimum, through a request for a second time extension to comply with permit conditions.”)

Again, Petitioners’ argument that UH Hilo’s April 28, 2021 notice of compliance with Condition No. 4 constituted a “revision” to the CDUP is clearly refuted by the notice itself. The notice set forth the reasons for compliance with Condition No. 4, and it plainly did not seek a further extension of the construction initiation deadline.

¹² To the extent Petitioners argue that a notice of compliance with each and every condition of the CDUP must be approved solely by the Board (instead of the Chairperson on behalf of the Board), such an argument would be incorrect. Neither the CDUP nor the BLNR’s administrative rules require Board approval of compliance with each condition. In fact, HAR § 13-5-42(b) provides that the “chairperson or board” are responsible for determining compliance with the standard conditions.

Petitioners do not cite to any rule or other law that requires a contested case hearing for notices of compliance with permit conditions. In fact, the CDUP provides that in the case of alleged noncompliance with permit conditions, the “chairperson shall first attempt to secure compliance from the responsible party, and if unsuccessful, shall bring the matter to the board[.]” D&O at 271.¹³

C. BLNR should consider Petitioners’ unclean hands in raising objections to UH Hilo’s notice of compliance.

As UH Hilo explained in its July 30, 2019 letter to BLNR, although TIO had timely initiated “work” or “construction . . . on the land” in compliance with Condition No. 4, due to “current limitations on access to the [TMT Project] site,” UH Hilo, without waiving the foregoing, and out of an abundance of caution, sought the extension of time. *See* Petition at Ex. 1. UH Hilo explained that:

¹³ A contested case hearing for the approval of UH Hilo’s notice of compliance with Condition No. 4 was also not required by constitutional due process under these circumstances. Even assuming a constitutionally cognizable property interest, “[d]ue process is not a fixed concept requiring a specific procedural course in every situation,” and due process “is flexible and calls for such procedural protections as the particular situation demands.” *See Sandy Beach Def. Fund v. City and County of Honolulu*, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989). As demonstrated above, nothing in UH Hilo’s April 28, 2021 notice of compliance with Condition No. 4 (nor BLNR’s approval of the notice) changed any aspect of the CDUP, and the CDUP clearly empowered the BLNR chairperson to determine compliance (or seek compliance) with all conditions as applicable. In addition, Petitioners will have an opportunity to further present their arguments on UH Hilo’s compliance with Condition No. 4 through the briefing permitted by BLNR in Minute Order No. 1. Finally, to the extent that Petitioners assert that UH Hilo cannot comply with the CDUP because of alleged “changed conditions and unexpected circumstances,” Petitioners previously and repeatedly raised these, and other, arguments in the contested case hearing on the conservation district use application, and therefore received substantial due process on these issues. *See, e.g.* D&O at FOF 359-362 (rejecting Petitioner Ching’s argument that CDUP should be denied because TIO does not yet have all the funds necessary to complete the project); D&O at FOF 690, 692-693, 701, 791 and COL 383 (rejecting Petitioners’ argument that unpermitted ahu were improperly removed). *See also generally* D&O (recognizing testimony from numerous individuals and organizations (including Petitioners) that opposed the project, as well as many that strongly supported the TMT Project).

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.

See Petition at Ex. 1.

Similarly, TIO, in its July 29, 2019 letter to UH Hilo explained:

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 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.

See Petition at Ex. 1 (Attachment 1).

TIO’s contractors attempted to move heavy construction equipment to the TMT Project site on July 16, 2019, but the convoy was blocked by protestors near Mauna Kea Access Road, and access to the site remained physically blocked for weeks. See Liu Decl.

As widely reported in the media, virtually all the Petitioners (individually or as members of various organizations) actively participated in the protests and/or coordinated with others engaging in the protests to block access to the TMT Project site. See, e.g. *Judge denies petition for TRO against TMT*, Hawaii Tribune-Herald, July 23, 2019,

<https://www.westhawaii.com/2019/07/23/hawaii-news/judge-denies-petition-for-tro-against-tmt/> (noting lawsuit filed in State Circuit Court by Petitioners Maunakea Anaina Hou,

Kealoha Pisciotto, Paul K. Neves, Clarence Ching and others to halt construction of the TMT

Project); Jennifer Sinco Kelleher and Caleb Jones, *Hawaii protesters press on to stop telescope, face arrest*, Associated Press, July 17, 2019,

<https://apnews.com/article/41ffb293900c49ae951a4356f3f27eac> (quoting Petitioner Kealoha

Pisciotta); *Hawaiian Activists Block Mauna Kea Summit Over Telescope Project*, Rising Up With Sonali, <https://risingupwithsonali.com/hawaiian-activists-block-mauna-kea-summit-over-telescope-project/> (interview with Petitioner Kealoha Pisciotta as President of Petitioner Mauna Kea Anaina Hou); Blaze Lovell, *TMT Protest Camp Packs Up Due to COVID-19*, Civil Beat, March 25, 2020, <https://www.civilbeat.org/beat/tmt-protest-camp-packs-up-due-to-covid-19/> (quoting Petitioner Paul Neves as leader of a “key group in the protest against the telescope,” and noting that “[s]o far, the protesters have successfully halted telescope construction[.]”); Michael Brestovansky, *High court hears case of group that supported TMT protesters*, Hawaii Tribune Herald, May 21, 2021, <https://www.hawaiitribune-herald.com/2021/05/21/hawaii-news/high-court-hears-case-of-group-that-supported-tmt-protesters/> (discussing case involving donations to Petitioner KAHEA: The Hawaiian-Environmental Alliance, which supported protesters).

Numerous publicly-accessible social media posts by Petitioners and others also document many of the Petitioners’ concerted efforts to physically block access to the TMT Project site. *See, e.g.* Paul Neves, Facebook (November 7, 2020, 11:02 a.m.), <https://www.facebook.com/photo.php?fbid=3998270586852995&set=pb.100000102806231.-2207520000..&type=3> (photograph of Petitioner Paul Neves at protest site near Mauna Kea Access Road); Clarence Ching, Facebook (July 15, 2021, 3:00 p.m.), <https://www.facebook.com/ku.ching.3/posts/10160094297537565> (photographs and post commemorating blockage of Mauna Kea Access Road on July 15, 2019); and Pu‘uhonua o Pu‘uhuluhulu Maunakea, Facebook (July 20, 2019, 12:15 a.m.), <https://www.facebook.com/puuhuluhulu/posts/2106094953027144> (video of protestors,

including Petitioner Kealoha Pisciotta, blocking access to Mauna Kea Access Road) (collectively attached hereto as Exhibit “C”).

Thus, substantially the same organizations and individuals who are now raising objections to UH Hilo’s alleged “noncompliance” with Condition No. 4 in this proceeding are the same organizations and individuals, among others, who caused or advocated for the delay in the transport of heavy equipment to the TMT Project site, which was a basis for UH Hilo’s request (out of an abundance of caution and with the reservation of all rights) to request an extension of the Condition No. 4 deadline.

In other words, Petitioners are objecting to an extension of Condition No. 4, which would not have been necessary to request (and grant), but for the Petitioners’ acts, with others, in supporting and participating in protests to physically stop TIO from proceeding with additional work and construction at the TMT Project site in furtherance of Condition No. 4. Simply put, Petitioners’ objections in this proceeding are of their own making.

Under the doctrine of unclean hands, a person “who comes into equity must come with clean hands.” *See 7’s Enters, Inc. v. Del Rosario*, 111 Hawai‘i 484, 494, 143 P.3d 23, 33 (2006). Administrative agencies have the discretion to take into account equitable considerations. *See Southern Foods Group, L.P. v. State Dept. of Educ.*, 89 Hawai‘i 443, 452, 974 P.2d 1033, 1042 (1999) (noting that administrative agency discretion, “When invoked as a guide to judicial action it means a sound discretion, that is to say, a discretion exercised not arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result”) (quoting *Booker v. Midpac Lumber Co.*, 65 Haw. 166, 172, 649 P.2d 376, 380 (1982) (citations and internal brackets omitted)) (Emphasis added).

BLNR should find that Petitioners have brought this proceeding with unclean hands, because they, with others, actively worked to advocate, manufacture and/or coordinate the very situation that they now seek to obtain relief from. As a matter of equity and fairness (as well as in the interests of good and sound public policy), Petitioners' attempt to challenge the very same BLNR actions that they themselves necessitated should not be condoned by BLNR, and the Petition should be denied.

III. CONCLUSION

Based on all of the reasons asserted herein and any reasons appearing of record, TIO respectfully requests that BLNR deny the Petition in its entirety.

DATED: Honolulu, Hawai'i, November 4, 2021.

/s/ Ross T. Shinyama

J. DOUGLAS ING
ROSS T. SHINYAMA
SUMMER H. KAIawe
Attorneys for
TMT INTERNATIONAL OBSERVATORY LLC

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

DECLARATION OF FENGCHUAN LIU

DECLARATION OF FENGCHUAN LIU

I, FENGCHUAN LIU, hereby declare as follows:

1. I am the Project Manager for the Thirty Meter Telescope project (the “TMT Project”) for TMT International Observatory LLC (“TIO”).
2. I make this declaration in lieu of an affidavit and based on personal knowledge and the records and files maintained by TIO.
3. I have a Ph.D. in Physics from the University of Washington, Seattle.
4. Prior to serving as the Project Manager for the TMT Project, I was the acting Project Manager beginning in December, 2020, and I was the Deputy Project Manager since October, 2015.
5. As the Project Manager, I have overall responsibility for managing the design and construction of the TMT Project, and as such, I have been involved with the design, engineering, and construction of the TMT Project.
6. Condition No. 5 of the Decision and Order granting the Conservation District Use Permit for the TMT Project (the “CDUP”) required that “[b]efore 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.”

7. In the context of the CDUP and Condition No. 5, and based upon common practice with respect to the development of large telescope projects, TIO interpreted the word “work” in Condition No. 5 as distinct from “construction to be done on the land” as stated in Condition No. 4.

8. This is because the development of large telescope projects, such as the TMT Project, require extensive on-site and site-related coordination, testing, and surveying work (among other work), which do not necessarily require ground-disturbing activities in advance of actual, physical construction on the land.

9. On February 4, 2019, pursuant to Condition No. 5 of the CDUP, UH Hilo submitted to the Board of Land and Natural Resources (“BLNR”) Chairperson the required construction and grading plans and specifications for the TMT Project for approval, which included the TMT Project civil package construction documents (the “TMT Project Civil Package”) prepared by TIO and its consultants.

10. The TMT Project Civil Package noted that the scope of work for the project included the construction of the Thirty Meter Telescope site, access road and underground utility conduits.

11. Attached hereto as Exhibit “A” is a true and correct copy of a letter dated June 19, 2019 from BLNR to the University of Hawai‘i at Hilo (“UH Hilo”) (with a copy to TIO) noting that the TMT Project met the preconstruction requirements in the CDUP and that BLNR was therefore issuing a notice to proceed with construction of the TMT Project.

12. After receiving the notice to proceed, TIO continued to work expeditiously and diligently to commence work and/or construction on the land for the TMT Project pursuant to, and consistent with, the CDUP, including Condition No. 4 of the CDUP.

13. This work and/or construction on the land after June 19, 2019 included the following:

- a. June 20, 2019 - Removal of unpermitted ahu, which involved ground disturbance activities;
- b. June 25, 2019 - M3 and Goodfellow Bros. Inc. (“GBI”) met at the TMT Project site to test the GPS equipment and verify the benchmark locations and coordinates with the existing site survey;
- c. June 25, 2019 - A partial survey of the Submillimeter Array (“SMA”) access road (which would be used to access the TMT Project access road and site) was completed for accuracy in comparison to the owner-furnished survey;
- d. June 25, 2019 - Personnel from the SMA and the James Clerk Maxwell radio telescopes joined the construction crew to coordinate the GPS system and verify the impact on telescope operations;
- e. July 8, 2019 - All consultants and contractors met for a pre-construction meeting at the Waikoloa Marriott to discuss procedures, safety, and requirements for the TMT Project;
- f. July 12, 2019 - GBI, M3 and SMA representatives met to locate and survey the SMA underground fiber optic and electrical lines to mitigate the risk of damaging the fiber optics and in preparation of mobilizing heavy equipment to the TMT Project site;

g. July 16, 2019 - TIO mobilized approximately 18 vehicles and heavy construction equipment, including a 980 Loader, D6 Dozer, WA320 Loader and Mini-Ex/Roller for transport to the TMT Project site.

14. Attached hereto as Exhibit "B" are true and correct copies of oversize and/or overweight vehicle and load permits from the State of Hawai'i Department of Transportation and the County of Hawai'i Department of Public Works for TIO's vehicles and heavy construction equipment.

15. Although TIO was ready and able to move its vehicles and heavy construction equipment to the TMT Project site on July 16, 2019, the vehicles were physically blocked by protestors near the entrance to the Mauna Kea Access Road and could not proceed past that point.

16. Although TIO continued to be ready and able to move its vehicles and heavy construction equipment to the TMT Project site after July 16, 2019, after weeks of continued protestor activity near the entrance of Mauna Kea Access Road, TIO made a decision to suspend the mobilization of the equipment to the site indefinitely.

I DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: Pasadena, California, November 4, 2021.


FENGCHUAN LIU

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

DECLARATION OF COUNSEL

DECLARATION OF COUNSEL

I, ROSS T. SHINYAMA, hereby declare as follows:

1. I am an attorney with the law firm of Watanabe Ing LLP, and one of the attorneys for TMT International Observatory LLC (“TIO”).

2. I make this declaration in lieu of an affidavit and based on personal knowledge and the records and files of this matter.

3. Attached hereto as Exhibit “C” are true and correct copies of publicly-accessible social media posts by or relating to Petitioners Paul Neves, Clarence Ching, Kealoha Pisciotta and other individuals and organizations documenting their efforts to physically block access to the TMT Project site.

4. These social media posts were accessed by my office on or about November 4, 2021 at the URL links noted in the attached memorandum in opposition.

I DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: Honolulu, Hawaii, November 4, 2021.

/s/ Ross T. Shinyama
ROSS T. SHINYAMA

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 on the date indicated below, a true and correct copy of the foregoing was duly served via email to the following parties:

Linda L.W. Chow
Lauren K. Chun
Deputy Attorneys General
Linda.L.Chow@hawaii.gov
Lauren.K.Chun@hawaii.gov
*Attorneys for the Board of Land
and Natural Resources*

Jesse K. Souki
Associate General Counsel
University of Hawai'i
souki@hawaii.edu
*Attorney for University of
Hawai'i, Hilo*

Lincoln S.T. Ashida
Newton J. Chu
Torkildson, Katz, Moore, & Harris
Isa@torkildson.com
njc@torkildson.com
*Attorneys for Perpetuating
Unique Educational
Opportunities (PUEO)*

Richard Naiwieha Wurdeman
RNWurdeman@RNWLaw
Bianca Isaki
bianca.isaki@gmail.com
Attorneys for the Mauna Kea Hui

Harry Fergerstrom
hankhawaiian@yahoo.com

Richard L DeLeon
kekaukike@msn.com

Mehana Kihoi
uhiwai@live.com

C. M. Kaho'okahi Kanuha
kahookahi@gmail.com

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

Cindy Freitas
hanahanai@hawaii.rr.com

Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
The Temple of Lono

Kalikolehua Kanaele
akulele@yahoo.com

Stephanie-Malia:Tabbada
s.tabbada@hawaiiantel.net

Tiffnie Kakalia
tiffniekakalia@gmail.com

Glen Kila
makakila@gmail.com

Dwight J. Vicente
[dwightjvicente@gmail.com](mailto:dwrightjvicente@gmail.com)

Brannon Kamahana Kealoha
brannonk@hawaii.edu

William Freitas
kukulukuula@gmail.com

J. Leina'ala Sleightholm
leina.ala.s808@gmail.com

Michael Cain
Michael.cain@hawaii.gov
Custodian of the Records

DATED: Honolulu, Hawai‘i, November 4, 2021.

/s/ Ross T. Shinyama

J. DOUGLAS ING

ROSS T. SHINYAMA

SUMMER H. KAIawe

Attorneys for

TMT INTERNATIONAL OBSERVATORY LLC

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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

CDUP HA-3568

Marcia Sakai, Interim Chancellor
University of Hawai'i at Hilo
200 West Kāwili Street
Hilo, HI 96720

JUN 19 2019

SUBJECT: NOTICE TO PROCEED: CONSERVATION DISTRICT USE PERMIT (CDUP) HA-3568
Thirty Meter Telescope (TMT)
Mauna Kea Science Reserve, Ka'ohē Mauka, Hāmākua District, Hawai'i
TMK (3) 4-4-015:009

The Department of Land and Natural Resources (DLNR) has received and reviewed the following documents related to Conservation District Use Permit (CDUP) HA-3568 for the Thirty Meter Telescope:

1. Civil Construction Package
2. Best Management Practices for the Civil Construction Package
3. Recreation Parking Plan
4. Mitigation measure matrix for compliance with CDUP HA-3568 general and special conditions

The DLNR approved CDUP HA-3568 for TMT in a Decision and Order in October 2017. The documents were submitted in support of the following two conditions of the permit:

General Condition No. 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.

Special Condition No. 32: Construction can be initiated once the permittee demonstrates compliance with the preconstruction conditions and mitigation measures contained in the Decision. The Department is required to review the construction and grading plans for consistency with the permit. Once the construction and grading plans

CDUP HA-3568
Notice to Proceed

have been signed and the preconstruction conditions have been met the Department will issue a Notice to Proceed to TMT.

The Civil Construction Package was submitted to DLNR on February 3, 2019. The Civil Construction Package prepares the site for construction, and involved batch plant site, the access way, and the TMT site for construction. Staff from the Office of Conservation and Coastal Lands (OCCL) met with the TMT design team to review the construction documents on March 11, 2019. The plans that were submitted are consistent with the Environmental Impact Statement (EIS) and the Conservation District Use Application (CDUA).

The mitigation measures required by the CDUP include actions related to historic resources, archaeological and cultural monitoring, materials waste management and spill prevention, waste minimization, cultural and natural resources training for project employees and contractors, arthropod monitoring, safety and accident prevention, and invasive species prevention and control.

Additional mitigation measures were agreed to in the Final Environmental Impact Statement and the TMT Management Plan. These include actions related to access way paving and design, arthropod monitoring, noise pollution, noise permit and noise variance, independent construction monitors, best management practices documentation, a rock movement plan, decommissioning, site documentation, construction mitigation measures, a cultural and archaeological monitoring plan, an NPDES permit, and an oversize and overweight vehicles permitting plan.

Based upon our review of the information you 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.

If you have any questions, please feel free to contact Michael Cain at the Office of Conservation and Coastal Lands (OCCL) at 808-587-0048.

Sincerely,



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

c: Stephanie Nagata, Director, OMKM
Gary Sanders, Project Manager, TMT
DLNR – Land Division, Division of Forestry and Wildlife, Division of Conservation and Resource Enforcement
County Planning Department
Jim Hayes, Planning Solutions Inc.

This space for issuing office.

APPLICATION NO. _____

Date Stamp _____

State of Hawaii
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

DOT 4-085
(HWY-C 07/15R)

**APPLICATION TO OPERATE OR TRANSPORT
OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
OVER STATE HIGHWAYS**

Ref# 181035XBR

Date 7/1/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: Is and Topsoil

Fax: 808-696-5330

Address: Po Box 1899

Phone: 808-896-3273

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: Waikoloa Quarry Destination: MAUNA KEA OBSERVATORY

Over Routes: on to waikoloa road on to hwy 190 on to hwy 200 on to maunakea access road

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY & COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT ON SATURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: Goodfellow brothers

62-1244 Waikoloa
ADDRESS

Object or load to be moved: 349 Excavator BM500

STATE WEIGHT, SIZE, ATTACHMENTS, ETC

WHT= 117500 L=38'8" W= 11'5" H= 12'6"

Method of movement: mounted on

OR MOUNTED ON, TOWED BY, UNDER OWN POWER, ETC

Check which and supply information: TRUCK TRUCK-TRACTOR OTHER TRAILER TRAILER DOLLY JEEP POLICE ESCORT PRIVATE ESCORT

Make: Peterbilt

No. of Axles: 4

Gross Wt. (lbs.): 85000

189998

Tare Wt. (lbs.): 23050

30,000

License: 542HDY

276HYJ

Overall Dimensions of Vehicle Including Load		
Width	11 ft.	5 in.
Length	73 ft.	7 in.
Height	13 ft.	6 in.
Rear Projection:		
Length	_____ ft.	_____ in.
Height	_____ ft.	_____ in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	10886	9007	9007	9007	5053	5053	5053		
With Load	12330	22600	28196	28196	26415	26415	26415		
No. of Wheels	2	2	4	4	4	4	4		
Tire Sizes	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5		
Axle Spacing (ft. & in.)	13'11"	4'6"	4'8"	35'8"	5'	5'			

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

Island Topsoil

PERMITTEE

Jennifer Cardines

By: _____

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 07/11/19

Approved: _____

DIRECTOR OF TRANSPORTATION

Permit No.: 19-H-0580

By: _____

Permit Fee: \$ 25.00

EXHIBIT "B"

HAWAII DISTRICT ENGINEER
TITLE

Department of Public Works
 County of Hawai'i
 Hilo, Hawai'i
 Phone: (808) 961-8321
 Fax: (808) 961-8630

NO. E/6-19-010

DATE: _____

STATE PERMIT NO. 181035XBR

In compliance with Section 291-38, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 12 Feet 6 Inches Length: 38 Feet 8 Inches
 Weight: 117500 Lbs. Width: 11 Feet 5 Inches

Type of Object or Equipment 349 excavator, DH500

Route of Travel: Origin Waikoloa Quarry

Destination TDP at Waialea Rd

Over Routes: CR70 Waikoloa Rd

Time of Movement Date 7/17/19 - 8/17/19

Time: From 8:30 To 15:00

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 882-7411 FIRM: ISLAND REPS&7

FIRM FAX: 696-5330 BY: [Signature]
 (Electronic signature accepted)

FIRM EMAIL: _____

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

[Signature]
 for Director

cc: Applicant
 Hawai'i Police Dept. (Fax: 961-2228)

DPW Form 11
 Revised 06/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highway Route MP 0.00 To MP 0.99	Puuhiko St. To MP 0.16 To MP 1.53	Kohala Mt. Rd. To MP 2.00 To MP 21.8	Aloha Pali Hwy. Routes 270 Amakoe Subd. Rd. To Peleolu Valley MP 23.8 To MP 28.9	South Kona Belt Road Rte. 11 Mhoi Rd. To Kohala Jct. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over

ESCORT REQUIREMENTS	Maialani-South Point Rd. RT-11 Hokuappi To South Point Rd. MP 86.9 To MP 69.5	Maunaloa/Hawaii Belt Road, Rte. 190 Keannui Bridge to Seaside Lookout MP 3.0 To MP 27.7	Kawailoa Road, Rte. 19 Waialae Bridge to Kakaia Harbor MP 59.1 To MP 3.4	Kalihi/Kona Urban Area Rte. 16 Honolulu Harbor (MP 97.55) to Rte. 71 Honolulu (MP 113.8)
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide.
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.00' to 13.99'	16.00' high OR Slower than 10 MPH below posted Speed Limit
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Reopment Night Move (10:00 pm to 5:00 am)
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	(Day moves may be approved on a case-by-case basis upon request.)
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

LOAD LENGTHS ESCORT REQUIREMENTS	
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

PROJECTION LENGTH REQUIREMENT	
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

LOADED VEHICLE OPERATING SPEED ESCORT REQUIREMENTS	
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:	
a.	Urban Hilo Area (Wailuku Bridge to Kawailani Street)
b.	Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)
Exceptions may be allowed in opposite direction of peak traffic flow	
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)	

Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:	
a.	Pualako Street (Kanoalehua Avenue to Komohana Street)
b.	Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)
Exceptions may be allowed in opposite direction of peak traffic flow	

NIGHT MOVES:	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows:	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

WEIGHT LIMITATIONS:			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES:				
Bridge Restrictions	Single Axle > 42,000 lbs. or		Tandem or Tridem Axle > 60,000 lbs.	
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	W = 900(L+40)			
	85,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Nihoa Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
ANY BRIDGE UNDER CONSTRUCTION				
Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.				

OTHER REQUIREMENTS :

Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.

In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahuaioa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glenwood, Akaka Falls Road.)

Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.

This space for issuing office:

APPLICATION NO. 190551XB

Date Stamp

State of Hawaii
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

DOT 4-005
(HWY-C 07/15R)

APPLICATION TO OPERATE OR TRANSPORT
OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
OVER STATE HIGHWAYS

Date 7/3/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: Island Topsoil

Fax: 808-696-5330

Address: Po Box 1969

Phone: 808-696-3273

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: waikoloa quarry Destination: MAUNA KEA OBSERVATORY

Over Routes: on to waikoloa rd on to hwy 180 on to hwy 200 on to mauna kea access road

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY OR COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT ON TUESDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: good fellow brothers

88-1244 waikoloa rd
ADDRESS

Object or load to be moved: 336 excavator BH513

STATE WEIGHT, SIZE, ATTACHMENTS, ETC

WHT= 82000 L=36'8" W= 11'3" H= 12'

Method of movement: mounted on

PERMITTEE OR MOUNTED ON, TOWED BY, UNDER OWN POWER, ETC

Check which and supply information

- TRUCK SEMI-TRAILER DOLLY
 TRUCK-TRACTOR FULL TRAILER JEEP
 OTHER OTHER

- POLICE ESCORT
 PRIVATE ESCORT

Make: Peterbilt

No. of Axles: 4

Gross Wt. (lbs.): 85000

189598

Tare Wt. (lbs.): 23050

30000

License: 542HDY

276HYJ

Overall Dimensions of Vehicle Including Load		
Width	11 ft.	3 in.
Length	73 ft.	7 in.
Height	13 ft.	in.
Rear Projection:		
Length	ft.	in.
Height	ft.	in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	10886	9007	9007	9007	5053	5053	5053		
With Load	11893	21096	21097	21097	19961	19961	19961		
No. of Wheels	2	2	4	4	4	4	4		
Tire Sizes	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5		
Axle Spacing (ft. & in.)	13'11"	4'6"	4'9"	3'8"	5'2"	5'2"			

The undersigned hereby certifies that the above-described vehicle shall be reduced in the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

Island Topsoil

PERMITTEE
Jennifer Carrales

By: 

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted; subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 7/3/19

Approved: 

DIRECTOR OF TRANSPORTATION

By: 

HAWAII DISTRICT ENGINEER

Permit No.: 19-H-0551

Permit Fee: \$ 25.00

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highway With 11 Feet to 12 Feet Wide Travel Lane	Puainako St. Rte. 2000 Kilauaea Ave. To Konoehana St. MP 0.16 To MP 1.52	Kohala Mt. Rd. Rte. 250 Kawaihae Rd. to Akoni Pule Hwy. MP 2.0 To MP 21.8	Akoni Pule Hwy. Route 270 Alaheke Subd. Rd. to Poihulu Valley MP 23.8 To MP 28.9	South Kona Belt Road Rte. 11 Mihouli Rd. To Honalo Jct. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 18.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	18.00' and over	16.00' and over	16.00' and over
ESCORT REQUIREMENTS					
Private Front Escort	Nashua South Point Rd. Rt. 11 Honalo To South Point Rd. MP 60.8 To MP 69.5	Mamalahoe/Hawaii Belt Road Rte. 190 Keolu/Ku Bridge to Scenic Lookout MP 13.0 To MP 27.7	Kawaihae Road Rte. 19 Wealea Bridge to Kawaihae Harbor MP 59.1 To MP 62.4	Kailua-Kona Urban Area Rte. 19 Honokohau Harbor (MP 97.65) to Rte. 11 Honalo (MP 113.9)	Special Requirements
Private Front & Rear Escorts	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	11.00' to 11.99'	Greater than 12.00' wide
Police Front & Private Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	12.00' to 12.99'	16.00' high OR Slower than 10 MPH below posted Speed Limit
Police Front & Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.00' to 13.99'	13.00' to 13.99'	Recommend Night Move (10:00 pm to 5:00 am)
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	14.00' to 14.99'	14.00' to 14.99'	Take Queen Kaahumanu Hwy., Two Police With One Private Front Escorts For Route 190 *	14.00' to 14.99'	(Day moves may be approved on a case- by-case basis upon request.)
Special Approval & Requirements	15.00' to 15.99'	15.00' to 15.99'	Take Queen Kaahumanu Highway	15.00' to 15.99'	
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	16.00' and over	

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

HEIGHT:	
Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

MOVE LENGTHS:	
Escort requirements for empty and loaded moves are as follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

PROJECTIONS:	
Escort requirements for front and/or rear projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

TRAVELING SPEED:	
Escort requirements for slow moving vehicles are shown below. (Use highest posted speed limit on route)	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

DISTANCE TRAVELED:
Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

PEAK HOURS:	
Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:	
a.	Urban Hilo Area (Wailuku Bridge to Kawaiiani Street)
b.	Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)
Exceptions may be allowed in opposite direction of peak traffic flow	
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)	

SCHOOL TRAFFIC HOURS:	
Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:	
a.	Puainako Street (Kanoelohua Avenue to Komohana Street)
b.	Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)
Exceptions may be allowed in opposite direction of peak traffic flow	

NIGHT MOVES:	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows:	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

PAVEMENT STRUCTURES:			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES:				
Bridge Restrictions	Single Axle > 42,000 lbs. or		Tandem or Tridem Axle > 60,000 lbs.	
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES W = 900(L+40)	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less > 65,000 lbs.	28.00-ft. or more < 28.00-ft.	80,000 lbs. or less > 80,000 lbs	Hawaii District Approval Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.83) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Ninole Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
ANY BRIDGE UNDER CONSTRUCTION Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.				

OTHER REQUIREMENTS :	
UNUSUAL CONDITIONS: Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.	
ROAD GRADES: In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahuatoa, Waihinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)	
REVISIONS: Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.	

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

This space for issuing office:

APPLICATION NO. 190552XB

Date Stamp

State of Hawaii
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

DOT 4-005
(HWY-C 07/15R)

APPLICATION TO OPERATE OR TRANSPORT
OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
OVER STATE HIGHWAYS

Date 7/3/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: Island Topsoil

Fax: 808-696-5330

Address: Po Box 1989

Phone: 808-696-3273

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: waikaloa quarry Destination: MAUNA KEA OBSERVATORY

Over Routes: on to waikaloa rd on to hwy 190 on to hwy 200 on to mauna kea access road

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY OR COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT ON TUESDAY, WEDNESDAY, THURSDAY, FRIDAY, SATURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: good fellow brothers

68-1244 waikaloa rd
ADDRESS

Object or load to be moved: 336 excavator BMS14

YEAR, WEIGHT, SIZE, ATTACHMENTS, ETC

WHT= 82000 L=36'8" W= 11'3" H= 12'

Method of movement: mounted on

TRUCK OR MOUNTED ON, TOWED BY, UNDER OWN POWER, ETC

Check which and supply information

- TRUCK TRUCK-TRACTOR OTHER
 SEMI-TRAILER FLAT TRAILER OTHER
 DOLLY JEEP

- POLICE ESCORT
 PRIVATE ESCORT

Make: Peterbilt

No. of Axles: 4

Gross Wt. (lbs.): 85000

118998

Tare Wt. (lbs.): 23050

30000

License: 542HDY

276HYJ

Overall Dimensions of Vehicle Including Load		
Width	11	ft. 3 in.
Length	73	ft. 7 in.
Height	13	ft. in.
Rear Projection:		
Length		ft. in.
Height		ft. in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	10886	9007	9007	9007	5053	5053	5053		
With Load	11893	21096	21097	121097	19961	19961	19961		
No. of Wheels	2	2	4	4	4	4	4		
Tire Sizes	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5		
Axle Spacing (ft. & in.)	13'11"	4'6"	4'9"	35'8"	5'2"	5'2"			

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

Island Topsoil

PERMITTEE

Jannifer Cardnes

By:

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side

Date: 07/05/19

Approved:

DIRECTOR OF TRANSPORTATION

Permit No.: 19-H-0552

By:

HAWAII DISTRICT ENGINEER

Permit Fee: \$ 25.00

TITLE

Department of Public Works
 County of Hawai'i
 Hilo, Hawai'i
 Phone: (808) 961-8321
 Fax: (808) 961-8830

NO. 56-19-020

DATE: _____

STATE PERMIT NO. 19-H-0552 / 19.0552(B)

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 13 Feet _____ Inches Length: 73 Feet 7 Inches
 Weight: 8200 Lbs. Width: 11 Feet 3 Inches

Type of Object or Equipment 336 excavator DH514

Route of Travel: Origin Waikola Army
 Destination TOP of Waikola

Over Routes: onto waikola

Time of Movement: Date 7/17/19 - 8/17/19
 Time: From 0830 To 1500

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 882-7411 FIRM: ISLAND TOPSOIL
 FIRM FAX: 696-5330 BY: [Signature]
(Electronic signature accepted)
 FIRM EMAIL: Scott.Lee.Souza@ISlandTOPSOIL.com

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

[Signature] for Director

cc: Applicant
 Hawai'i Police Dept. (Fax 961-2228)

DPW Form 11
 Revised 08/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
 GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highways with 13.1 to 13.125E Wide Travel Lanes	Punaluu St. Rte. 2600 Kilauea Ave. To Konohehe St. MP 0.16 To MP 1.63	Koalaue Rd. Rte. 250 Kaulaue Rd. To Kaulaue Pkwy. MP 2.00 To MP 2.18	Akopi Pule Hwy. Route 270 Aieaekia Slips Rd. To Peleho Valley MP 23.8 To MP 28.9	South Kona Belt Road Rte. 14 Miloliu Rd. To Honalo Rd. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over

ESCORT REQUIREMENTS	Naalehu, South Point Rd. Rte. 11 Honolulu To South Point Rd. MP 69.9 To MP 69.6	Mamalahoe/Hawaii Belt Road, Rte. 190 Kaimuki Bridge to Seaside Lookout MP 13.0 To MP 27.7	Kawaihae Road, Rte. 19 Waialeka Bridge to Kawaihae Kaihok MP 59.1 To MP 3.4	Kailua-Kona Urban Area Rte. 19 Honolulu Harbor (MP 97.55) to Rte. 11 Honalo (MP 113.8)
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide.
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.00' to 13.99'	16.00' high OR
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

Permit requirements for length and loaded moves are as follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

Permit requirements for height and/or load projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

Permit requirements for operating speed are as follows:	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:	
a.	Urban Hilo Area (Wailuku Bridge to Kawailani Street)
b.	Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)
Exceptions may be allowed in opposite direction of peak traffic flow	
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)	

Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:	
a.	Puainako Street (Kanoehua Avenue to Komohana Street)
b.	Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)
Exceptions may be allowed in opposite direction of peak traffic flow	

NIGHT MOVES:	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows :	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

MAXIMUM WEIGHT LIMITATIONS:			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES:				
Bridge Restrictions	Single Axle > 42,000 lbs. or Tandem or Tridem Axle > 60,000 lbs.			
	<ol style="list-style-type: none"> 1. Maximum speed over structure not to exceed 5 MPH. 2. No stopping on the structure. 3. No other vehicles on the bridge during crossing except passenger vehicles. 4. Provide front and rear escorts. 			
MOST BRIDGES W = 900(L+40)	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less > 65,000 lbs.	28.00-ft. or more < 28.00-ft.	80,000 lbs. or less > 80,000 lbs	Hawaii District Approval Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	<u>Kamakoa Bridge No. 1 (MP 4.83)</u> Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	<u>Ninole Bridge (MP 56.58)</u> <u>Hilea Bridge (MP 67.72)</u> Route 11, past Pahala		<u>Aamakao Bridge (MP 26.58)</u> <u>Niuliuli Bridge (MP 27.28)</u> Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
<u>ANY BRIDGE UNDER CONSTRUCTION</u> Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.				

<u>OTHER REQUIREMENTS :</u>	
Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.	
In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)	
Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.	

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

This space for issuing office:
 APPLICATION NO. 190559LXBR
 Date Stamp

State of Hawaii
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION

DOT 4-005
 (HWY-C 07/15R)

**APPLICATION TO OPERATE OR TRANSPORT
 OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
 OVER STATE HIGHWAYS**

Date 7/13/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: Island Topsoil Fax: 808-696-5330

Address: Po Box 1999 Phone: 808-696-3273

MOVEMENT Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: Waikoloa quarry Destination: MAUNA KEA OBSERVATORY

Over Routes: on to waikoloa rd on to hwy 190 on to hwy 200 on to mauna kea access road

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY & COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT ON TURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: Goodfellow brothers NAME ADDRESS 62-1244 waikoloa

Object or load to be moved: D10T with out blade and arms C252 STATE WEIGHT, SQ. L. ATTACHMENTS, ETC

WHT= 109715 L=17'5" W= 10'4" H= 13'4"

Method of movement: mounted on ATTACHMENT OR MOUNTED ON, TOWED BY, UNDER OWN POWER, ETC

Check which and supply information TRUCK SEMI-TRAILER DOLLY POLICE ESCORT
 TRUCK-TRACTOR FLAT TRAILER JEEP PRIVATE ESCORT
 OTHER OTHER

Make: Peterbilt Aspen
 No. of Axles: 4
 Gross Wt. (lbs.): 85000 189988
 Tare Wt. (lbs.): 23050 30,000
 License: 542HDY 276HYJ

Width	10	ft.	4	in.
Length	73	ft.	7	in.
Height	14	ft.	4	in.
Rear Projection:				
Length		ft.		in.
Height		ft.		in.

In contact with Pavement	FRONT	AXLE 1	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	10886	8007	8007	8007	5053	5053	5053			
With Load	12234	22600	26474	26474	25000	25000	25000			
No. of Wheels	2	2	4	4	4	4	4			
Tire Sizes	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5			
Axle Spacing (ft. & in.)	13'11"	4'6"	4'9"	3'6"	5'	5'				

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

By: Island Topsoil PERMITTEE
Jennifer Cardines

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as specified above on the application is hereby granted; subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 07/05/19 Approved: DIRECTOR OF TRANSPORTATION

Permit No.: 19-H-0559 By: HAWAII DISTRICT ENGINEER

Permit Fee: \$ 25.00

Department of Public Works
County of Hawai'i
Hilo, Hawai'i
Phone: (808) 961-8321
Fax: (808) 961-8630

NO. 570-19-012

DATE: _____

STATE PERMIT NO. 190559LXBR

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 13 Feet 4 Inches Length: 97 Feet _____ Inches
Weight: 109715 Lbs. Width: 10 Feet 4 Inches

Type of Object or Equipment D10 Dozer

Route of Travel: Origin Waikeala Quarry

Destination Top of Waikeala Rd.

Over Routes: ONTD Waikeala Rd

Time of Movement: Date 1/17/14 - 8/12/14

Time: From 8:30 To 15:00

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 882-7911 FIRM: ISland TAPSOIT

FIRM FAX: 646-5330 BY: [Signature]

FIRM EMAIL: Schnitzer_Souza@ISlandTAPSOIT.com (Electronic signature accepted)

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

[Signature]
for Director

cc: Applicant
Hawai'i Police Dept. (Fax: 961-2228)

DPW Form 11
Revised 08/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Honolulu, Wahi 14.00' to 15.99' When Travel Lanes	Punahoa St. Rte. 2000 Kilauea Ave. To Konaehana St. MP 0.16 To MP 1.83	Kohala Rd. Rte. 250 Kawiliwe Rd. To 200th Pole Hwy. MP 2.0 To MP 21.8	Alakai Pule Hwy. Route 270 Amakoe Subd. Rd. To Piihoo Valley MP 23.8 To MP 28.9	South Kona Belt Road Rte. 41 Mihouli Rd. To Honalo Jct. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts	18.00' to 18.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over

ESCORT REQUIREMENTS	Nashua-South Point Rd. Rte. 11 Honalo To South Point Rd. MP 68.9 To MP 89.5	Mamalahoe / Hawaii Belt Road. Rte. 190 Keamuni Bridge to Specific Lookout MP 13.0 To MP 27.7	Kaunapali Road Rte. 18 Waiala Bridge to Kealahou Harbor MP 59.1 To MP 3.4	Kailua-Kona Urban Area Rte. 191 (Kealahou Harbor) (MP 97.55) To Rte. 191 (Hualala) (MP 113.8)
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide,
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.0' to 13.99'	16.00' high OR
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit
Notice to Public, Staging Plans and Two Police with One Private Front Escorts	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

Besides the above, oversized and loaded vehicle loads follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

Besides the above, projection and/or rear projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

Besides the above, loaded vehicle operating speed:	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:	
a.	Urban Hilo Area (Wailuku Bridge to Kawailani Street)
b.	Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)
Exceptions may be allowed in opposite direction of peak traffic flow	
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)	

Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:	
a.	Puainako Street (Kanoelohua Avenue to Komohana Street)
b.	Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)
Exceptions may be allowed in opposite direction of peak traffic flow	

NIGHT MOVES	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows :	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

PERMIT CLASSIFICATIONS			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES				
Bridge Restrictions	Single Axle > 42,000 lbs. or Tandem or Tridem Axle > 60,000 lbs.			
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES W = 900(L+40)	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	85,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Ninole Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
	ANY BRIDGE UNDER CONSTRUCTION Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.			

OTHER REQUIREMENTS :

Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.

In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)

Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.

This space for issuing office:
 APPLICATION NO. 190563
 Date Stamp

State of Hawaii
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION

DOT 4-005
 (HWY-C 07/15R)

**APPLICATION TO OPERATE OR TRANSPORT
 OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
 OVER STATE HIGHWAYS**

Date 7/3/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: Island Topsoil Fax: 808-696-5330

Address: Po Box 1989 Phone: 808-696-3273

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: WAIKOLOA QUARRY GBI YARD Destination: MAUNA KEA OBSERVATORY

Over Routes: ON TO WAIKOLOA RD ON TO HWY 190 ON TO HWY 200 ON TO MAUNAKEA ACCESS ROAD

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY OR COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT SATURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: Goodfellow brothers NAME ADDRESS: 62-244 Waikoloa

Object or load to be moved: DT8XL-VPAT DOZER G268 SPECIAL WEIGHT, SIZE, ATTACHMENTS, ETC.

WHT= 47406 L= 16'3" W= 13'7" H= 10'6"

Method of movement: mounted on SPECIAL MOUNTED OR MOUNTED ON, TOWED BY, UNDER OWN POWER, ETC.

Check which and supply information: TRUCK SEMI-TRAILER DOLLY POLICE ESCORT
 TRUCK-TRACTOR PUBLIC TRAILER JEEP PRIVATE ESCORT
 OTHER OTHER ASPEN

Make: Peterbilt
 No. of Axles: 4
 Gross Wt. (lbs.) 85000 157202
 Tare Wt. (lbs.) 23050 27200
 License: 542HDY 402MUJ

Overall Dimensions of Vehicle Including Load		
Width	ft.	7 in.
Length	73 ft.	7 in.
Height	11 ft.	6 in.
Rear Projection:		
Length	ft.	in.
Height	ft.	in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	10886	8361	8381	8361	4760	4760	4760		
With Load	11479	15472	145472	15472	13253	13253	13253		
No. of Wheels	2	2	4	4	4	4	4		
Tire Sizes	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5		
Axle Spacing (ft. & in.)	13'11"	4'6"	4'9"	35'8"	5'2"	5'2"			

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

Island Topsoil
 PERMITTEE
 By: Jennifer Gardines

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time specified above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 07/05/19 Approved: _____ DIRECTOR OF TRANSPORTATION

Permit No.: 19-H-0553 By: _____ HAWAII DISTRICT ENGINEER

Permit Fee: \$ 5.00

Exhibit E
 TMT Memorandum

Department of Public Works
County of Hawai'i
Hilo, Hawai'i
Phone: (808) 961-8321
Fax: (808) 961-8630

NO. 5/6-19-015

DATE: _____

STATE PERMIT NO. 190553

In compliance with Section 291-38, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 10 Feet 6 Inches Length: 16 Feet 3 Inches

Weight: 47400 Lbs. Width: 13 Feet 7 Inches

Type of Object or Equipment DT6XL-VPat Dozer C268

Route of Travel: Origin Waikoloa Quarry

Destination TOP of Waikoloa Rd

Over Routes: ONTD Waikoloa Road.

Time of Movement: Date 7/17/19 - 8/17/19
Time: From 8:30 To 15:00

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 882-7911 FIRM: ISland TOPSOil

FIRM FAX: 690-6330 BY: [Signature]
(Electronic signature accepted)

FIRM EMAIL: Jermiter.Sauza@ISlandTOPSOil.com

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

[Signature]
for Director

cc: Applicant
Hawai'i Police Dept. (Fax: 961-2228)

DPW Form 11
Revised 08/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highway With 11-Ft. to 12-Ft. Wide Travel Lanes	Puuhiko St. Rte. 2000 Kilauea Ave. To Komohana St. MP 0.16 To MP 1.65	Kohala Mt. Rd. Rte. 250 Kailua Rd. To Keolu Pkwy. MP 2.0 To MP 8.8	Akoni Pule Hwy. Route 270 Alakea Blvd. Rd. To Pololu Valley MP 23.8 To MP 28.9	South Kohala Rd. Rte. 16 Kilauea Jct. To Honalo Jct. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over

ESCORT REQUIREMENTS	Maalehu-South Point Rd. Rt. 11 Honalo To South Point Rd. MP 69.8 To MP 69.5	Mamalahoe / Hawaii Belt Road, Rte. 190 Keamuku Bridge to Seaside Lookout MP 13.0 To MP 27.7	Kawahae Road Rte. 18 Waieka Bridge to Kawahae Harbor MP 39.1 To MP 3.4	Kailua-Kona Urban Area Rte. 19 Honokohau Harbor (MP 97.65) To Rte. 11 Honalo (MP 113.8)
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide,
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.00' to 13.99'	16.00' high OR
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

Permit applicant shall be responsible to check overhead clearances along the route.	
Escorted combinations of length and/or height are as follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

Permit applicant shall be responsible to check overhead clearances along the route.	
Escorted combinations of length and/or height are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

Permit applicant shall be responsible to check overhead clearances along the route.	
Escorted combinations of length and/or height are as follows:	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:

- a. Urban Hilo Area (Wailuku Bridge to Kawaihina Street)
- b. Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)

Exceptions may be allowed in opposite direction of peak traffic flow
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)

Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:

- a. Puainako Street (Kanoelshua Avenue to Komohana Street)
- b. Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)

Exceptions may be allowed in opposite direction of peak traffic flow

Night moves must be approved by the Design Engineer or District Engineer.	
Minimum requirements are as follows :	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

<u>BRIDGES</u>					
<u>Bridge Restrictions</u>	Single Axle > 42,000 lbs. or		Tandem or Tridem Axle > 60,000 lbs.		
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 				
<u>MOST BRIDGES</u>	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority	
	W = 900(L+40)	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
		> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
<u>BRIDGES WITH LESS CAPACITY</u>	<u>Kamakoa Bridge No. 1 (MP 4.63)</u> Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.				
	<u>Ninole Bridge (MP 56.58)</u> <u>Hilea Bridge (MP 57.72)</u> Route 11, past Pahala		<u>Aamakao Bridge (MP 26.58)</u> <u>Niuli Bridge (MP 27.28)</u> Route 270, past Halaula		
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.				
<u>ANY BRIDGE UNDER CONSTRUCTION</u>					
Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.					

OTHER REQUIREMENTS :

Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.
In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)
Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

This space for issuing office:

State of Hawaii
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

DOT 4-005
(HWY-C 07/15R)

APPLICATION NO.

Date Stamp

APPLICATION TO OPERATE OR TRANSPORT
OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
OVER STATE HIGHWAYS

REF#180454

Date 7/3/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: Island Topsoil

Fax: 808-696-5330

Address: Po Box 1999

Phone: 808-696-3273

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: WAIKOLOA QUARRY GBI YARD Destination: MAUNA KEA OBSERVATORY

Over Routes: ON TO WAIKLOA ROAD ON TO HWY 190 ON TO HWY 200 ON TO MAUNAKEA ACCESS ROAD

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY OR COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0300 HRS NO MOVEMENT SATURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: good fellow brothers

62-1244 Waikoloa
ADDRESS

Object or load to be moved: 740 Rock truck DE233

STATE WEIGHT, SIZE ATTACHMENTS, ETC

WHT= 72399 L= 35'7" W= 11'3" H= 12'3"

Method of movement: mounted on

OR UNDER POWER MOUNTED ON, TOWED BY, UNDER OWN POWER, ETC

Check which and supply information

TRUCK

SEMI-TRAILER

DOLLY

POLICE ESCORT

TRUCK-TRACTOR

FLAT TRAILER

JEEP

PRIVATE ESCORT

OTHER

OTHER

Make: Peterbilt

Aspen

No. of Axles: 4

Gross Wt. (lbs.) 85000

167202

Tare Wt. (lbs.) 23050

27200

License: 542HDY

402MUJ

Overall Dimensions of Vehicle including Load			
Width	11	ft.	3
Length	73	ft.	7
Height	13	ft.	3
Rear Projection:			
Length		ft.	
Height		ft.	

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	10886	8361	8361	8361	4760	4760	4760		
With Load	11791	19221	19222	19222	17731	17731	17731		
No. of Wheels	2	2	4	4	4	4	4		
Tire Sizes	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5		
Axle Spacing (ft. & in.)	13'11"	4'6"	4'9"	35'8"	5'	5'			

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

Island Topsoil

PERMITTEE

Jennifer Cardinas

By:

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date 07/05/19

Approved:

DIRECTOR OF TRANSPORTATION

Permit No. 19-H-0555

By:

HAWAII DISTRICT ENGINEER

Permit Fee: \$ 5.00

Exhibit E
TMT Memorandum

Department of Public Works
County of Hawai'i
Hilo, Hawai'i
Phone: (808) 961-8321
Fax: (808) 961-8630

NO. 510-19-014

DATE: _____

STATE PERMIT NO. 780454

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 12 Feet 3 Inches Length: 35 Feet 7 Inches
Weight: 72399 Lbs. Width: 11 Feet 3 Inches

Type of Object or Equipment 740 ROLL TRUCK

Route of Travel: Origin Waikoloa Quarry

Destination TOP of Waikoloa

Over Routes: UNTD Waikoloa Rd

Time of Movement: Date 7/17/19 - 8/17/19
Time: From 8:30 To 16:00

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 882-7911 FIRM: I-Sland TOPSOil
FIRM FAX: 696-6330 BY: [Signature]
FIRM EMAIL: Jennifer.Sanzon@I-SlandTOPSOil.com (Electronic signature accepted)

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

[Signature]
for Director

cc: Applicant
Hawai'i Police Dept. (Fax: 861-2228)

DPW Form 11
Revised 08/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highway - from 14 ft to 12 ft with 7 axles	Pihaiako St. Rte. 2000 Kulaue Ave To Komoheana St. MP 0.16 To MP 0.95	Kona Mt. Rd. Rte. 250 Kawahine Rd. To Aiea Hill Pale Hwy. MP 2.0 to MP 21.8	Akoni Pale Hwy. Route 270 Anakea Subd. Rd. To Peleu Valley MP 23.8 to MP 28.9	South Kona Belt Road Rte. 11 Miloli Rd. To Kona Jct. MP 30.0 To MP 13.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over
ESCORT REQUIREMENTS	Mailele South Point Rd. Rte. 11 Honolulu To South Point Rd. MP 0.95 To MP 0.95	Mattajahoā / Hawaii Belt Road, Rte. 190 Keamuku Bridge to Seaside Lookout. MP 13.0 to MP 27.7	Kaunaloa Road, Rte. 192 Waialeale Bridge to Kaunaloa Harbor MP 59.3 to MP 3.4	Kailua-Kona Urban Area Rte. 19 Honolulu Harbor (MP 97.5) to Rte. 11 Honolulu (MP 113.8)	
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements	
Private Front & Rear Escorts	11.00' to 11.99'	14.00' to 14.99'	12.00' to 12.99'	Greater than 12.00' wide,	
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.0' to 13.99'	16.00' high OR	
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit	
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)	
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)	

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escort and permit vehicle).

Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

OVERSIZED LOADS AND LOADED TRAILERS ARE AS FOLLOWS:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

PROJECTIONS AND/OR REAR PROJECTIONS ARE AS FOLLOWS:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

OVERSIZED VEHICLES ARE AS FOLLOWS:	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

PERMITS:
 Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

RESTRICTIONS:
 Oversized and overweight vehicle movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:

- a. Urban Hilo Area (Wailuku Bridge to Kawailani Street)
- b. Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)

Exceptions may be allowed in opposite direction of peak traffic flow
 Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)

RESTRICTIONS:
 Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:

- a. Puainako Street (Kanoelohua Avenue to Komohana Street)
- b. Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)

Exceptions may be allowed in opposite direction of peak traffic flow

NIGHT MOVES	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows :	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES				
Bridge Restrictions	Single Axle > 42,000 lbs. or Tandem or Tridem Axle > 60,000 lbs.			
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES W = 900(L+40)	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Ninole Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niuliuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
	ANY BRIDGE UNDER CONSTRUCTION Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.			

OTHER REQUIREMENTS :	
Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.	
In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)	
Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.	

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

This space for issuing office:

APPLICATION NO. 190566

Date Stamp

State of Hawaii
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

DOT 4-005
(HWY-C 07/15R)

APPLICATION TO OPERATE OR TRANSPORT
OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
OVER STATE HIGHWAYS

Date 7/3/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: Island Topsoil

Fax: 808-696-5330

Address: Po Box 1999

Phone: 808-696-3273

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: WAIKOLOA QUARRY GBI YARD

Destination: MAUNA KEA OBSERVATORY

Over Routes: ON TO WAIKOLOA ROAD ON TO HWY 190 ON TO HWY 200 ON TO MAUNAKEA ACCESS ROAD

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY & COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT ON SATURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: good fellow brothers

62-1244 Waikoloa
ADDRESS

Object or load to be moved: 740 Rock truck DE238

STATUS: WEIGHT, SIZE, ATTACHMENTS, ETC.

WHT= 72389 L= 35'7" W= 11'3" H= 12'3"

Method of movement: mounted on

OR MOUNTED ON, TOWED BY, UNDER OWN POWER, ETC.

Check which and supply information:
 TRUCK SEMI-TRAILER DOLLY
 TRUCK-TRACTOR PULP TRAILER JEEP
 OTHER OTHER OTHER

POLICE ESCORT
 PRIVATE ESCORT

Make: Peterbilt

No. of Axles: 4

Gross Wt. (lbs.): 85000

Tare Wt. (lbs.): 23050

License: 542HDY

157202

27200

402MUJ

Overall Dimensions of Vehicle Including Load	
Width	11 ft. 3 in.
Length	73 ft. 7 in.
Height	13 ft. 3 in.
Rear Projection:	
Length	ft. in.
Height	ft. in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	10886	8361	8361	8361	4760	4760	4760		
With Load	11791	19221	19222	19222	17731	17731	17731		
No. of Wheels	2	2	4	4	4	4	4		
Tire Sizes	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5		
Axle Spacing (ft. & in.)	13'11"	4'6"	4'9"	35'8"	5'	5'			

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

Island Topsoil

PERMITTEE

Jennifer Cardenas

By

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time stated above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side

Date: 07/05/19

Approved:

DIRECTOR OF TRANSPORTATION

Permit No.: 19-P-0556

By

HAWAII DISTRICT ENGINEER

Permit Fee: \$ 5.00

Exhibit E
TMT Memorandum

Department of Public Works
 County of Hawai'i
 Hilo, Hawai'i
 Phone: (808) 961-8321
 Fax: (808) 961-8830

NO. 5/6-19-017

DATE: _____

STATE PERMIT NO. 19-4-0655 / 190556

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 12 Feet 3 Inches Length: 73 Feet 7 Inches

Weight: 72399 Lbs. Width: 11 Feet 3 Inches

Type of Object or Equipment 740 ROLL TRUCK, DE238

Route of Travel: Origin Waikona Quarry

Destination TOP OF Waikona

Over Routes: ONTD Waikona Road

Time of Movement: Date 7/17/19 - 8/14/19

Time: From 8:30 AM To 15:00 PM

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 882-7411 FIRM: ISLAND TOPSOIL

FIRM FAX: 696-5330 BY: [Signature]

FIRM EMAIL: Jennifer.Souza@IslandTopsoil.com (Electronic signature accepted)

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

[Signature] for Director

cc: Applicant
 Hawai'i Police Dept. (Fax: 961-2228)

DPW Form 11
 Revised 06/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	HILINAWE WITH 11 FEET OR 12 FEET WIDENED PRIVATE LANES	Puuhaka St. Rte. 20/20 Kahauna Ave. To Konehena St. MP 0.18 To MP 1.63	Kohala Mt. Rd. Rte. 250 Kaulaue Rd. To Akoni Pule Hwy. MP 2.0 To MP 24.8	Akoni Pule Hwy. Route 270 Ahakea Subd. Rd. To Pololu Valley MP 23.8 To MP 28.9	South Kona Belt Road Rte. 11 Miluli Rd. To Honalo Jct. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	18.00' and over	18.00' and over	16.00' and over

ESCORT REQUIREMENTS	Mailehu South Point Rd. Rt. 11 Highway To South Point Rd. MP 69.9 To MP 69.5	Mamalaioe / Hawaii Belt Road Rte. 190 Keatuku Bridge To South Lookout MP 18.0 To MP 27.7	Kaunaloa Road Rte. 19 Waialae Bridge To Kaunaloa Harbor MP 59.1 To MP 64	Kailua-Kona Urban Area Rte. 19 Honokohau Harbor (MP 97.5) To Rte. 11 Honalo (MP 113.8)
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide.
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.00' to 13.99'	16.00' high OR
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

Permit applicant shall be responsible to check overhead clearances along the route.	
LOAD LENGTHS ESCORT REQUIREMENTS	
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

Permit applicant shall be responsible to check overhead clearances along the route.	
PROJECTION LENGTH REQUIREMENT	
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

Permit applicant shall be responsible to check overhead clearances along the route.	
LOADED VEHICLE OPERATING SPEED ESCORT REQUIREMENTS	
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

Permit applicant shall be responsible to check overhead clearances along the route.	
Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:	
a.	Urban Hilo Area (Wailuku Bridge to Kawaihina Street)
b.	Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)
Exceptions may be allowed in opposite direction of peak traffic flow	
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)	

Permit applicant shall be responsible to check overhead clearances along the route.	
Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following :	
a.	Puainako Street (Kamelehuana Avenue to Komohana Street)
b.	Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)
Exceptions may be allowed in opposite direction of peak traffic flow	

NIGHT MOVES	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows :	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

WEIGHT LIMITATIONS			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES				
Bridge Restrictions	Single Axle > 42,000 lbs. or		Tandem or Tridem Axle > 60,000 lbs.	
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES W = 90(L+40)	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Ninole Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamgkao Bridge (MP 26.58) Niulii Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
	ANY BRIDGE UNDER CONSTRUCTION Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.			

OTHER REQUIREMENTS :	
Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.	
In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glenwood, Akaka Falls Road.)	
Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.	

This space for issuing office

APPLICATION NO. 190583

Date Stamp

State of Hawaii
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

DOT 4-005
(HWY-C 07/15R)

APPLICATION TO OPERATE OR TRANSPORT
OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
OVER STATE HIGHWAYS

Date 7/11/19

Pursuant to Chapter 201 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 201 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: Island Topsoil

Fax: 808-896-5330

Address: Po Box 1989

Phone: 808-896-3273

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: Waikoloa Quarry GBi yard Destination: MAUNA KEA OBSERVATORY

Over Routes: ON TO WAIKOLOA ROAD ON TO HWY 180 ON TO HWY 200 ON TO MAUNAKEA ACCESS ROAD

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY OR COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT ON SATURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: Goodfellow brothers

62-1244 Waikoloa
ADDRESS

Object or load to be moved: TELESTACK TC-421 K210

STATE WEIGHT, SIZE, ATTACHMENTS, ETC

WHT= 27800 L= 50' W= 9'1" H= 9'8"

Method of movement: mounted on

OR MOUNTED ON TOWED BY UNDER OWN POWER, ETC

Check which and supply information
 TRUCK SEMI TRAILER DOLLY POLICE ESCORT
 TRUCK-TRACTOR FULL TRAILER JEEP PRIVATE ESCORT
 OTHER OTHER

Make: Peterbilt

No. of Axles: 4

Gross Wt. (lbs.) 85000

157202

Tare Wt. (lbs.) 23050

27200

License: 542HDY

402MUJ

Overall Dimensions of Vehicle Including Load		
Width	9' 11"	1 in
Length	73 ft.	7 in.
Height	9' 8"	9 in.
Rear Projection		
Length	8 ft.	in.
Height	9' 8"	8 in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	10886	8361	8361	8361	4760	4760	4760		
With Load	11234	12531	12531	12531	9741	9741	9741		
No. of Wheels	2	2	4	4	4	4	4		
Tire Sizes	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5		
Axle Spacing (ft. & in.)	13'11"	4'6"	4'9"	35'8"	5'	5'			

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

Island Topsoil

PERMITTEE

Jennifer Cardenas

By: _____

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 07/11/19

Approved: _____

DIRECTOR OF TRANSPORTATION

Permit No.: 19-H-0583

By: _____

HAWAII DISTRICT ENGINEER

Permit Fee: \$ 5.00

TITLE

Exhibit E
TMT Memorandum

Department of Public Works
County of Hawai'i
Hilo, Hawai'i
Phone: (808) 961-8321
Fax: (808) 961-8630

NO. 570-19-019

DATE: _____

STATE PERMIT NO. 190583

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 9 Feet 9 Inches Length: 50 Feet _____ Inches

Weight: 27800 Lbs. Width: 9 Feet 1 inches

Type of Object or Equipment Tall stack TC 401

Route of Travel: Origin Waikoloa Quarry

Destination TOP OF WAIPUWA ROAD

Over Routes: CRPD Waikoloa Road

Time of Movement: Date 7/17/19 - 7/18/19

Time: From 8:30 To 15:00

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement, also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 882-7911 FIRM: ISLAND TRUCKS

FIRM FAX: 896-5330 BY: [Signature]
(Electronic signature accepted)

FIRM EMAIL: Jannifer.Scott@IslandTrucks.com

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

[Signature]

Dir Director

cc: Applicant
Hawai'i Police Dept. (Fax: 961-2228)

DPW Form 11
Revised 06/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highways With 34 FE To 12 FE Wide Travel Lanes	Puuhiko St. Rte. 2000 Kilauea Ave. To Kamehaha St. MP 0.16 To MP 1.53	Kohala Mt. Rd. Rte. 250 Kawiliwehi Rd. To Aieaon Pile Hwy. MP 2.0 To MP 24.8	Akoni Pule Hwy. Route 270. Aunakea Subd. Rd. To Pololu Valley MP 23.8 To MP 28.9	South Kona Belt Road Rte. 11 Moloai Rd. To Honohu Jet MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over
ESCORT REQUIREMENTS	Kaalehu South Point Rd. Rt. 111 Honolulu To South Point Rd. MP 60.9 To MP 69.6	Mamalahoe / Hawaii Belt Road, Rte. 190 Keaukahu Bridge to Seaside Lookout MP 13.0 To MP 27.7	Kaunaloa Road, Rte. 19 Malaka Bridge to Kaimulienaha Road MP 59.1 To MP 3.4	Kailua-Kona Urban Area Rte. 19 Honoaunani Harbor (MP 87.5) To Rte. 11 Honalo (MP 113.8)	
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	11.00' to 11.99'	Special Requirements
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	12.00' to 12.99'	Greater than 12.00' wide.
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.0' to 13.99'	13.0' to 13.99'	16.00' high OR
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit
Notice to Public, Staging Plans and Two Police with One Private Front Escorts	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (12:00 pm to 5:00 am)
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

LOAD LENGTHS		ESCORT REQUIREMENTS	
Up To 70.00'		No escorts required.	
70.01' To 80.00'		Provide private front escort	
80.01' To 100.00'		Provide private front and rear escorts	
Over 100.00'		Provide police front and rear escorts. May require special conditions.	
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.			

PROJECTION LENGTH		REQUIREMENT	
4' to 10', less than 7' high		Provide private escort at projection	
Greater than 10'		Additional requirements as determined by the issuing office	

LOADED VEHICLE OPERATING SPEED		ESCORT REQUIREMENTS	
Speed limit to 15 mph below speed limit		See Special Requirements within Kailua-Kona Urban Area (see page 1)	
16 mph to 25 mph below speed limit		Provide police front and rear escorts	
More than 25 mph below speed limit		Special approval and additional requirements as determined by the issuing office	

Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:

- Urban Hilo Area (Wailuku Bridge to Kawaihina Street)
- Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)

Exceptions may be allowed in opposite direction of peak traffic flow

Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)

Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following :

- Puainako Street (Kanoiehua Avenue to Komohana Street)
- Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)

Exceptions may be allowed in opposite direction of peak traffic flow

NIGHT MOVES	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows :	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

WEIGHT LIMITATIONS			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES				
Bridge Restrictions	Single Axle > 42,000 lbs. or Tandem or Tridem Axle > 60,000 lbs.			
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	W = 900(L+40) 65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
	> 85,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Ninole Bridge (MP 56.58) Hilea Bridge (MP 67.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
	ANY BRIDGE UNDER CONSTRUCTION Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.			

OTHER REQUIREMENTS :	
Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.	
In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)	
Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.	

This space for issuing office:
 APPLICATION NO. _____
 Date Stamp _____
 ref # 180209XBR

State of Hawaii
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION

DOT 4-005
 (HWY-C 07/15R)

APPLICATION TO OPERATE OR TRANSPORT
 OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
 OVER STATE HIGHWAYS

Date: 7/3/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: Island Topsoil Fax: 808-896-5330

Address: Po Box 1999 Phone: 808-896-3273

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: Waikaloa Quarry GBI yard Destination: MAUNA KEA OBSERVATORY

Over Routes: on to waikaloa road on to hwy 190 on to hwy 200 on to maunakea access road

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY & COUNTY REGULATIONS)

0830 to 1300 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT SATURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: good fellow brothers NAME ADDRESS 62-1244 Waikaloa

Object or load to be moved: THUNDER BIRD JAW CONE K219 STATE WEIGHT, SIZE, ATTACHMENTS, ETC

WHT=144000 L=68' W=10'6" H=14'2"

Method of movement: mounted on TYPE AND HOW MOUNTED ON, PLOWED BY, UNDER OWN POWER, ETC

Check which and supply information TRUCK TRUCK-TRACTOR OTHER SEMI-TRAILER TRAILER OTHER DOLLY JEEP POLICE ESCORT PRIVATE ESCORT

Make: Peterbilt THUNDER BIRD
 No. of Axles: 4
 Gross Wt. (lbs.): 85000
 Tire Wt. (lbs.): 23050 128000
 License: 542MDY

Overall Dimensions of Vehicle Including Load		
Width	10 ft.	6 in.
Length	74 ft.	7 in.
Height	14 ft.	2 in.
Rear Projection:		
Length	ft.	in.
Height	ft.	in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	10886	9007	9007	9007	0	0	0	0	
With Load	12870	20801	38826	38826	17646	17646	17646	17646	
No. of Wheels	2	2	4	4	4	4	4	4	
Tire Sizes	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	
Axle Spacing (ft. & in.)	13'11"	4'6"	4'9"	3'8"	5'	5'	5'		

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

By: Island Topsoil PERMITTEE
Jennifer Cardines

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side

Date: 07/10/19 Approved: DIRECTOR OF TRANSPORTATION

Permit No.: 19-H-0574 By: HAWAII DISTRICT ENGINEER

Permit Fee: \$ 25.00

Exhibit E
 TMT Memorandum

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highways With Widths less than 14.00'	Puuhiko St. Rte. 290, Kilauea Ave. To Konohe St. MP 0.15 To MP 1.63	Kohala Mt. Rd. Rte. 280, Kapaemahu Rd. To Konohe Hwy. MP 2.0 To MP 21.8	Akoni Pule Hwy. Rte. 270, Alakea Subd. Rd. To Pololu Valley MP 23.8 To MP 28.8	South Kona Belt Road Rte. 11, Miloliu Rd. To Honalo Jct. MP 85.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over
ESCORT REQUIREMENTS	Nasalehu South Point Rd. Rte. 11, Honalo To South Point Rd. MP 60.9 To MP 69.5	Mamalaena / Hawaii Belt Road, Rte. 190, Keamuku Bridge to Spout Lookout. MP 18.0 To MP 27.7	Kawailae Road Rte. 18, Waiala Bridge to Kawailae Harbor MP 59.1 To MP 3.4	Kailua-Kona Urban Area Rte. 18, Kailua Harbor (MP 97.55) to Rte. 11, Honalo (MP 113.8)	
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements	
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide.	
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.00' to 13.99'	16.00' High OR	
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit	
Notice to Public, Staging Plans and Two Police with One Private Front Escorts	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)	
Special Approval & Requirements	16.00' and over	16.00' and over	15.00' and over	(Day moves may be approved on a case-by-case basis upon request.)	

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

Overlength and/or loaded moves are as follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

Overheight and/or overwidth projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

Overweight vehicles are as follows:	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:

- Urban Hilo Area (Wailuku Bridge to Kawailani Street)
- Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)

Exceptions may be allowed in opposite direction of peak traffic flow

Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)

Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:

- Puinako Street (Kanoiehua Avenue to Komohana Street)
- Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)

Exceptions may be allowed in opposite direction of peak traffic flow

NIGHT MOVES:	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows :	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES:				
Bridge Restrictions	Single Axle > 42,000 lbs. or		Tandem or Tridem Axle > 60,000 lbs.	
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES W = 900(L+40)	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Ninole Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
ANY BRIDGE UNDER CONSTRUCTION Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.				

OTHER REQUIREMENTS :

Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.

In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)

Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.

This space for issuing office:

State of Hawaii
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

DOT 4-003
(HWY-C 07/15R)

APPLICATION NO. _____
Date Stamp _____

**APPLICATION TO OPERATE OR TRANSPORT
OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
OVER STATE HIGHWAYS**

ref# 180526X0R

Date 7/31/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

(ISSUE PERMIT TO: _____)

Name of owner (or lessee) of vehicle: Island Topsoil

Fax: 808-696-5330

Address: Po Box 1999

Phone: 808-696-3273

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: WAIKOLOA QUARRY GBI YARD

Destination: MAUNA KEA OBSERVATORY

Over Routes: on to waikoloa road on to hwy 190 on to hwy 200 on to maunakea access road

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY OR COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT ON SATURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: good fellow brothers

62-1244 Waikoloa
ADDRESS

Object or load to be moved: cone crusher K227

STATE WEIGHT, SIZE, ATTACHMENTS, ETC.

WHT=123000 L=55' WF=10' H=12'

Method of movement: mounted on

OR MOUNTED ON, TOWED BY, UNDER OWN POWER, ETC.

Check which one supply information:
 TRUCK SEMI TRAILER DOLLY POLICE ESCORT
 TRUCK-TRACTOR PULP TRAILER JEEP PRIVATE ESCORT
 OTHER OTHER OTHER

Make: Peterbilt

No. of Axles: 4

Gross Wt. (lbs.) 85000

Net Wt. (lbs.) 23050

License: 542HIC7

Overall Dimensions of Vehicle including Load		
Width	10 ft.	in.
Length	74 ft.	7 in.
Height	12 ft.	in.
Rear Projection:		
Length	ft.	in.
Height	ft.	in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	10886	4055	4055	4055	0	0	0	0	
With Load	12581	22600	28290	35290	15072	15072	15072	15072	
No. of Wheels	2	2	4	4	4	4	4	4	
Tire Sizes	31522.5	31522.5	31522.5	31522.5	11/24.5	11/24.5	11/24.5	11/24.5	
Axle Spacing (ft. & in.)	13'11"	4'6"	4'9"	3'8"	5'	5'	5'		

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

Island Topsoil

PERMITTEE

By: Jennifer Cardenas

SPECIAL PERMIT

Permission to operate the above described oversize and/or overweight vehicle and load over the route on the state and time as stated above on the application is hereby granted, subject however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 07/05/19

Approved: _____

Permit No. 19-T-0500

By: _____

Permit Fee: \$ 25.00

HAWAII DISTRICT ENGINEER

Department of Public Works
County of Hawai'i
Hilo, Hawai'i
Phone: (808) 961-8321
Fax: (808) 961-8630

NO. 576-19-011

DATE: _____

STATE PERMIT NO. 180526XBR

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 12 Feet _____ Inches Length: 55' Feet _____ Inches

Weight: 123000 Lbs. Width: 10 Feet _____ Inches

Type of Object or Equipment Cone Crusher, K227

Route of Travel: Origin Waikoloa Quarry

Destination TOP OF Waikoloa Rd.

Over Routes: ON W Waikoloa Rd.

Time of Movement Date 7/17/19 - 8/17/19

Time: From 8:30 To 15:00

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 882-7911 FIRM: ISland TOPSOil

FIRM FAX: 696-5330 BY: [Signature]
(Electronic signature accepted)

FIRM EMAIL: Jennifer.Souza@ISlandTOPSOil.com

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

[Signature]
for Director

cc: Applicant
Hawai'i Police Dept (Fax: 961-2228)

DPW Form 11
Revised 08/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highways With 11'6" To 12'6" Wide Travel Lanes	Punalu'u St. Rte. 2006 Kalauea Ave. To Konoana St. MP 0.16 To MP 1.63	Kohala Mt. Rd. Rte. 280 Kawalee Rd. To Aiea Hill Hwy. MP 21.0 To MP 24.8	Aiea Pua Hwy. Rte. 270 Amakea Subd. Rd. To Pololu Valley MP 23.8 To MP 28.9	South Kona Belt Road Rte. 11 Mahaiehu Rd. To Heahehe Rd. MP 13.9 To MP 15.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over

ESCORT REQUIREMENTS	Nanalei-Southern Pkwy. Rd. Rt. 11 Honuaunani To Saddle Pt. Rd. MP 60.9 To MP 69.5	Mamalahoe / Hawaii Belt Road, Rte. 190 Kaunuku Bridge To Seaside Lookout MP 13.0 To MP 27.7	Kaunuku Bridge To Seaside Lookout MP 13.0 To MP 27.7	Kaunuku Bridge To Seaside Lookout MP 13.0 To MP 27.7	Kailua-Kona Urban Area Rte. 19 Honolulu To Harbor (MP 97.59) Rte. 19 Honolulu To Harbor (MP 113.9)
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide.
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'	13.00' to 13.99'	16.00' high OR
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit
Notice to Public, Staging Plans and Two Police with One Private Front Escorts	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

Escorted lengths of loaded trucks are as follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

Escorted lengths of projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

Escorted speeds are as follows:	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

Oversized and overweight vehicles movements are restricted from the hours of 8:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:

- a. Urban Hilo Area (Wailuku Bridge to Kawailani Street)
- b. Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)

Exceptions may be allowed in opposite direction of peak traffic flow
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)

Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:

- a. Puainako Street (Kanoiehua Avenue to Komohana Street)
- b. Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)

Exceptions may be allowed in opposite direction of peak traffic flow

NIGHT MOVES	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows :	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

PAVEMENT STRUCTURES			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES				
Bridge Restrictions	Single Axle > 42,000 lbs. or		Tandem or Tridem Axle > 60,000 lbs.	
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
W = 900(L+40)	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Ninole Bridge (MP 56.58) Hilea Bridge (MP 67.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
ANY BRIDGE UNDER CONSTRUCTION				
Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.				

OTHER REQUIREMENTS :	
Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.	
In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)	
Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.	

This space for issuing office:
 APPLICATION NO. 190557
 Date Stamp

State of Hawaii
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION

DOT 4-005
 (HWY-C 07/15R)

**APPLICATION TO OPERATE OR TRANSPORT
 OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
 OVER STATE HIGHWAYS**

Date 7/1/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: Island Topsoil Fax: 808-696-5330

Address: Po Box 1999 Phone: 808-696-3273

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: WAIKOLOA QUARRY GBI YARD Destination: MAUNA KEA OBSERVATORY

Over Routes: ON TO WAIKOLOA RD ON TO HWY 190 ON TO HWY 200 ON TO MAUNAKEA ACCESS ROAD

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0300 HRS 0030 to 0500 HRS NO MOVEMENT TUESDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT 7/1/19-8/17/19

OBJECT OR LOAD:

Owner: good fellow brothers NAME ADDRESS: 82-1244 Waikoloa

Object or load to be moved: 930 loader L188 STATE WEIGHT, SIZE, ATTACHMENTS ETC

WHT# 66337 L=33'5" W=11'7" H=13'5"

Method of movement: mounted on (SEE ATTACHMENT FOR MOUNTING OR TOWING BY, UNDER OWN POWER, ETC)

Check which and supply information: TRUCK SEMI-TRAILER DOLLY POLICE ESCORT
 TRUCK-TRACTOR FULL TRAILER JEEP PRIVATE ESCORT
 OTHER OTHER

Make: Peterbilt Open
 No. of Axles: 4
 Gross Wt. (lbs.) 35000 157202
 Tare Wt. (lbs.) 23050 27200
 License: 542HDY 402MUJ

Overall Dimensions of Vehicle Including Load		
Width	11 ft.	7 in.
Length	73 ft.	7 in.
Height	14 ft.	5 in.
Rear Projection:		
Length	ft.	in.
Height	ft.	in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	10886	8301	8301	8361	4760	4760	4760		
With Load	11715	18312	18312	18312	18648	16648	16648		
No. of Wheels	2	2	4	4	4	4	4		
Tire Sizes	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5		
Axle Spacing (ft. & in.)	13'11"	4'6"	4'9"	3'8"	5'	5'			

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

Island Topsoil
 PERMITTEE
 By: Jennifer Cardines

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted, subject however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 07/05/19 Approved: DIRECTOR OF TRANSPORTATION

Permit No.: 19-H-0557 By: HAWAII DISTRICT ENGINEER

Permit Fee: \$ 5.00

Exhibit E
 TMT Memorandum

Department of Public Works
 County of Hawai'i
 Hilo, Hawai'i
 Phone: (808) 961-8321
 Fax: (808) 961-8630

NO. 576-19-016

DATE: _____

STATE PERMIT NO. 19-14-0567

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 74 Feet 5 Inches Length: 73 Feet 7 Inches
 Weight: 66337 Lbs. Width: 11 Feet 7 Inches

Type of Object or Equipment 980 loader 1188

Route of Travel: Origin Waikoloa Quarry

Destination Top of Waikoloa Rd.

Over Routes: ONTD Waikoloa Road

Time of Movement: Date 7/17/19 - 8/17/19

Time: From 8:30 AM To 15:00 PM

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 882-7911 FIRM: I-Sland TSPSOI

FIRM FAX: 696-5330 BY: [Signature]
 (Electronic signature accepted)

FIRM EMAIL: Jennifer.Santora@I-SlandTSPSOI.com

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

[Signature]
 for Director

cc: Applicant
 Hawai'i Police Dept. (Fax: 961-2228)

DPW Form 11
 Revised 06/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highways With 14.0' to 14.99' Wide Travel Lanes	Puuhiko St. Rte. 2800 Kilauea Ave. to Konaiana St. MP 0.18 To MP 1.63	Konaiana Rd. Rte. 250 Kawahae Rd. to Aiea Pule Hwy. MP 2.0 to MP 21.8	Aloni Pule Hwy. Route 270 Ahakea Subd. Rd. to Pohoia Valley MP 23.8 to MP 28.9	South Kona Belt Road Rte. 11 Miloli Rd. To Honalo Jct. MP 89.0 to MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over

ESCORT REQUIREMENTS	Neaenu-South Point Rd. Rt. 11 Honalo To South Point Rd. MP 60.8 To MP 68.5	Mamalahoe / Hawaii Belt Road, Rte. 190 Keamuku Bridge to Seaside Road MP 13.0 To MP 27.7	Kawahae Road, Rte. 190 Waiala Bridge to Kawahae Harbor MP 59.1 To MP 3.4	Kailua-Kona Urban Area Rte. 10 Honokohau Harbor (MP 97.55) to Rte. 11 Honalo (MP 113.8)
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements
Private Front & Rear Escorts	14.00' to 14.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide,
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.00' to 13.99'	16.00' high OR
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required.
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

Permit applicant shall be responsible to check overhead clearances along the route.	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

Permit applicant shall be responsible to check overhead clearances along the route.	
Permit applicant shall be responsible to check overhead clearances along the route.	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

Permit applicant shall be responsible to check overhead clearances along the route.	
Permit applicant shall be responsible to check overhead clearances along the route.	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

Permit applicant shall be responsible to check overhead clearances along the route.	
Permit applicant shall be responsible to check overhead clearances along the route.	
Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:	
a.	Urban Hilo Area (Wailuku Bridge to Kawailani Street)
b.	Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)
Exceptions may be allowed in opposite direction of peak traffic flow	
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)	

Permit applicant shall be responsible to check overhead clearances along the route.	
Permit applicant shall be responsible to check overhead clearances along the route.	
Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following :	
a.	Puainako Street (Kapelehua Avenue to Komohana Street)
b.	Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)
Exceptions may be allowed in opposite direction of peak traffic flow	

NIGHT MOVES	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows :	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

WEIGHT LIMITATIONS			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES				
Bridge Restrictions	Single Axle > 42,000 lbs. or		Tandem or Tridem Axle > 60,000 lbs.	
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
W = 900(L+40)	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Ninole Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niulii Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
ANY BRIDGE UNDER CONSTRUCTION				
Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.				

OTHER REQUIREMENTS :	
Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.	
ROADS	
In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)	
Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.	

This space for issuing office

APPLICATION NO. _____

Date Stamp _____

State of Hawaii
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

DOT 4-005
(HWY-C 07/15R)

APPLICATION TO OPERATE OR TRANSPORT
OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
OVER STATE HIGHWAYS

REF# 180509

Date 7/3/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: Island Topsoil

Fax: 808-696-5330

Address: Po Box 1999

Phone: 808-886-3273

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: WAIKOLOA QUARRY GB1 YARD Destination: MAUNA KEA OBSERVATORY

Over Routes: on to waikoloa road on to hwy 180 on to hwy 200 on to maunakea access road

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY & COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT SATURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: Goodfellow brothers

62-1244 Waikoloa
ADDRESS

Object or load to be moved: CONTROL VAN LP178

(GROSS WEIGHT, SIZE, ATTACHMENTS, ETC)

WHT= 30000 L= 45'2" W= 4' H= 12'

Method of movement: mounted on

(CHECK WHETHER MOUNTED ON, TOWED BY, UNDER OWN POWER, ETC)

Check which end supply information: TRUCK TRUCK-TRACTOR OTHER SEMI-TRAILER FLAT TRAILER OTHER CONTROL VAN POLICE ESCORT PRIVATE ESCORT JEEP

Make: Peterbilt

No. of Axles: 4

Gross Wt. (lbs.) 85000

Tare Wt. (lbs.) 23050

License: 542HDY

CONTROL VAN

Overall Dimensions of Vehicle including Load		
Width	8	ft. in.
Length	73	ft. 7 in.
Height	12	ft. in.
Rear Projection:		
Length	9	ft. in.
Height	7	ft. in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	10886	4054	4055	4055	0	0	0		
With Load	11261	8563	8554	8554	5376	5376	5376		
No. of Wheels	2	2	4	4	4	4	4		ref# 780509
Tire Sizes	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5		
Axle Spacing (ft. & in.)	13'11"	4'6"	4'9"	3'5"8"	5'	5'			

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

Island Topsoil

PERMITTEE

By: Jennifer Cardinos

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted which however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 07/05/19

Approved: _____
DIRECTOR OF TRANSPORTATION

Permit No.: 19-H-0558

By: _____
HAWAII DISTRICT ENGINEER

Permit Fee: \$ 5.00

Department of Public Works
 County of Hawai'i
 Hilo, Hawai'i
 Phone: (808) 961-8321
 Fax: (808) 961-8630

NO. 5/6-19-013
 DATE: _____
 STATE PERMIT NO. 180509

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 12 Feet _____ Inches Length: 45 Feet 2 Inches
 Weight: 30,000 Lbs. Width: 8 Feet _____ Inches

Type of Object or Equipment Concrete Veam
 Route of Travel: Origin Waialaia Quarry
 Destination Top of Waikona Rd
 Over Routes: UNR Waikona Rd

Time of Movement: Date 7/17/19 - 8/17/19
 Time: From 8:30 To 15:00

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 882-7911 FIRM: P. Stand TSP017
 FIRM FAX: 696-5330 BY: [Signature]
(Electronic signature accepted)
 FIRM EMAIL: Jennifer.Souza@PStandTSP017.com

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

[Signature]
 for Director

cc: Applicant
 Hawai'i Police Dept. (Fax 961-2228)

DPW Form 11
 Revised 06/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highways With 145'6" to 127'6" Wide Travel Lanes	Punalua St. Rte. 2000 Kilauea Ave. To Kapaemahu St. MP 0.16 To MP 1.63	Kohala Rd. Rte. 260: Kahaloa Rd. to 20.99 Mile Hwy. MP 20.16 to MP 21.8	Akoni Pule Hwy. Rte. 270: Anakeke Subd. Rd. to Pololu Valley MP 23.8 to MP 28.9	Shouji Kona East Road Rte. 11: Molo Rd. To Honalo Jct. MP 89.0 To MP 113.8
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.89'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over

ESCORT REQUIREMENTS	Makalei South Point Rd. Rte. 11: Honouliuli to South Point Rd. MP 60.9 to MP 69.5	Mamalahoe / Hawaii Barge Road. Rte. 180: Kaunuku Bldg. to Seaside Lockout MP 13.0 to MP 27.7	Kawehaie Road Rte. 18: Walaka Bridge to Kawahae Harbor MP 59.1 to MP 3.4	Kalihi, Kona, Urban Area Rte. 18: Honouliuli Harbor (MP 97.55) to Rte. 11/Honalo (MP 113.8)
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide.
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.0' to 13.99'	16.00' high OR
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

Overloaded and overloaded and loaded moves are as follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

Projection lengths for front and/or rear projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

Loaded vehicle operating speeds are as follows:	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

Oversized and overweight vehicles movements are restricted from the hours of 8:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:

- a. Urban Hilo Area (Wailuku Bridge to Kawaihewa Street)
- b. Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)

Exceptions may be allowed in opposite direction of peak traffic flow
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)

Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays, (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following

- a. Puainako Street (Kanoalehua Avenue to Komohana Street)
- b. Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)

Exceptions may be allowed in opposite direction of peak traffic flow

NIGHT MOVES	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows :	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES				
Bridge Restrictions	Single Axle > 42,000 lbs. or		Tandem or Tridem Axle > 60,000 lbs.	
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES W = 900(L+40)	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 180, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Ninole Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
	ANY BRIDGE UNDER CONSTRUCTION Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.			

OTHER REQUIREMENTS :	
Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.	
In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuskini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)	
Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.	

This space for issuing office:
 APPLICATION NO. 190554
 Date Stamp

State of Hawaii
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION

DOT-4-005
 (HWY-C 07/15R)

**APPLICATION TO OPERATE OR TRANSPORT
 OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
 OVER STATE HIGHWAYS**

Date: 7/3/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:
 Name of owner (or lessee) of vehicle: Island Topsoil Fax: 808-896-5330

Address: Po Box 1999 Phone: 808-896-3273

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wide-load Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: WAIKOLOA QUARRY GSI YARD Destination: MAUNA KEA OBSERVATORY

Over Routes: ON TO WAIKOLOA RD ON TO HWY 190 ON TO HWY 200 ON TO MAUNAKEA ACCESS ROAD

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY & COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0300 HRS 0030 to 0500 HRS NO MOVEMENT ON SATURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: Goodfellow brothers 62-1244 Waikoloa

NAME ADDRESS

Object or load to be moved: WA 320 LOADER XL0655 STATE WEIGHT, SIZE, ATTACHMENTS, ETC

WHT= 34128 L= 25'3" W= 8'6" H= 10'6"

Method of movement: mounted on (SEE INSTRUCTIONS FOR MOUNTED ON, TOWED BY, UNDER OWN POWER, ETC)

Check which and supply information: TRUCK SEMI-TRAILER DOLLY POLICE ESCORT
 TRUCK-TRACTOR FUN TRAILER JEEP PRIVATE ESCORT
 OTHER OTHER

Make: Peterbilt SP50EN
 No. of Axles: 4
 Gross Wt. (lbs.): 85000 157202
 Tare Wt. (lbs.): 23050 27200
 License: 542HDY 402MUJ

Overall Dimensions of Vehicle Including Load		
Width	8 ft.	8 in.
Length	73 ft.	7 in.
Height	11 ft.	6 in.
Rear Projection:		
Length	ft.	in.
Height	ft.	in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	10886	8361	8361	8361	4760	4760	4760		
With Load	11313	13480	13481	13481	10874	10874	10874		
No. of Wheels	2	2	4	4	4	4	4		
Tire Sizes	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5	31522.5		
Axle Spacing (ft. & in.)	13'11"	4'6"	4'9"	35'8"	5'2"	5'2"			

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

Island Topsoil
 PERMITTEE
 By: Jennifer Cordinas

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 07/05/19 Approved: _____

Permit No.: 19-H-0554 By: _____

Permit Fee: \$ 5.00 HAWAII DISTRICT ENGINEER

Exhibit E
 TMT Memorandum

Department of Public Works
County of Hawai'i
Hilo, Hawai'i
Phone: (808) 961-8321
Fax: (808) 961-8630

NO. 576-19-021

DATE: _____

STATE PERMIT NO. 19-H-0554 / 190554

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 11 Feet 6 Inches Length: 73 Feet 7 Inches

Weight: 34100 Lbs. Width: 9 Feet 6 inches

Type of Object or Equipment WA 300 Loader X10655

Route of Travel: Origin Waikona Quarry

Destination To Pad Waikona

Over Routes: Out to Waikona Road.

Time of Movement: Date 7/17/19 - 8/17/19

Time: From 8:30 To 15:00

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement, also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 882-7411 FIRM: ISland TOPSOil

FIRM FAX: 696-5330 BY: [Signature]

(Electronic signature accepted)

FIRM EMAIL: Jennifer.Souza@ISlandTOPSOil.com

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

[Signature]
for Director

cc: Applicant
Hawai'i Police Dept. (Fax: 961-2228)

DPW Form 11
Revised 06/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highways With 11 Feet or 12 Feet Wide Travel Lanes	Punaluu St. Rte. 2000 Kaula Ave. To Komoehana St. MP 0.16 To MP 1.63	Konaia Mt. Rd. Rte. 250 Kawahae Rd. To Akoni Pule Hwy. MP 2.0 to MP 21.8	Akoni Pule Hwy. Route 270 Alakea Subd. Rd. To Pololu Valley MP 23.8 to MP 28.9	South Kona Belt Road Rte. 11 Mhojii Rd. To Honalo Jct. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over
ESCORT REQUIREMENTS	Maaleu-South Point Rd. Rte. 11 Honolulu To South Point Rd. MP 60.9 To MP 69.5	Mamalahoa / Hawaii Belt Road. Rte. 190 Keenikuu Bridge to Scenic Lookout MP 13.0 to MP 27.7	Kawaihae Road Rte. 19 Waieka Bridge to Kawahae Harbor MP 59.1 to MP 3.4	Kailua-Kona Urban Area Rte. 19 Honokohau Harbor (MP 97.5) to Rte. 11 Honalo (MP 113.8)	
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	11.00' to 11.99'	Special Requirements
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	12.00' to 12.99'	Greater than 12.00' wide
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.0' to 13.99'	13.0' to 13.99'	16.00' high OR
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

HEIGHTS:	
Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

MOVE LENGTHS:	
Escort requirements for empty and loaded moves are as follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

PROJECTIONS:	
Escort requirements for front and/or rear projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

TRAVELING SPEED:	
Escort requirements for slow moving vehicles are shown below. Use highest posted speed limit on route.	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

DISTANCE TRAVELED:
Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

PEAK HOURS:
Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:
a. Urban Hilo Area (Wailuku Bridge to Kawailani Street)
b. Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)
Exceptions may be allowed in opposite direction of peak traffic flow
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)

SCHOOL TRAFFIC HOURS:
Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:
a. Puainako Street (Kanoelohua Avenue to Komohana Street)
b. Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)
Exceptions may be allowed in opposite direction of peak traffic flow

NIGHT MOVES:	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows :	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

PAVEMENT STRUCTURES:			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES:				
Bridge Restrictions	Single Axle > 42,000 lbs. or		Tandem or Tridem Axle > 60,000 lbs.	
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	W = 900(L+40) 65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Nihoa Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
ANY BRIDGE UNDER CONSTRUCTION				
Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.				

OTHER REQUIREMENTS :	
UNUSUAL CONDITIONS:	
Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.	
ROAD GRADES:	
In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road)	
REVISIONS:	
Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.	

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

This space for issuing office:
 APPLICATION NO. 190568
 Date Stamp

State of Hawaii
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION

DOT 4-005
 (HWY.C 07/15R)

APPLICATION TO OPERATE OR TRANSPORT
 OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
 OVER STATE HIGHWAYS

Date 7/08/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: BJ'S EXCAVATION & HAULING CO., INC

Address: PO BOX 1867 KAILUA-KONA HI 96745

Phone: 808-331-8120

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: GOODFELLOW BROTHERS

Destination: MAUNA KEA OBSERVATORY-TMT

Over Routes: RIGHT ON WAIKOLOA ROAD, RIGHT ON HIGHWAY 190, LEFT ON DANIEL K INOUYE (SADDLE), LEFT ON MAUNA KEA ACCESS ROAD TO THE TOP

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY OR COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT ON FRIDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: GOODFELLOW BROTHERS INC

58-1244 WAIKOLOA ROAD, WAIMEA 96743

Object or load to be moved: WA320 WHEEL LOADER-XL0665

34,120 LBS, 31'L, 8'6" W, 10'6" H

Method of movement: ON TRAILER

Check which and supply information

TRUCK
 TRUCK-TRACTOR
 OTHER

SEMI-TRAILER
 FUN TRAILER
 OTHER

DOLLY
 JEEP

POLICE ESCORT
 PRIVATE ESCORT

Make: 98' PETERBILT

No. of Axles: 3

Gross Wt. (lbs.) 58,000

Tare Wt. (lbs.) 19,022

License: 621HDX

120,000

22,500

550HZE

Overall Dimensions of Vehicle including Load			
Width	10	ft.	0 in.
Length	60	ft.	0 in.
Height	12	ft.	6 in.
Rear Projection:			
Length		ft.	in.
Height		ft.	in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	11895	3568	3568	7500	7500	7500			
With Load	12046	11314	11314	13656	13656	13656			
No. of Wheels	2	4	4	4	4	4			
Tire Sizes	24.50	24.50	24.50	24.50	24.50	24.50			
Axle Spacing (ft. & in.)		16.50	4.50	46.10	4.20	4.20			

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

[Signature]
 PERMITTEE
 By: BJ'S EXCAVATION & HAULING CO., INC

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted; subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Permit No.: 10-H-0568

Permit Fee: \$ 5.00

Approved: *[Signature]*
 DIRECTOR OF TRANSPORTATION
 By: _____
 HAWAII DISTRICT ENGINEER

Exhibit E
 TMT Memorandum

Private Front Escort	
Private Front & Rear Escorts	
Police Front & Private Rear Escorts	
Police Front & Rear Escorts	
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	
Special Approval & Requirements	
ESCORT REQUIREMENTS	
Private Front Escort	
Private Front & Rear Escorts	
Police Front & Private Rear Escorts	
Police Front & Rear Escorts	
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	
Special Approval & Requirements	

* Whenever Three (3) Escorts Are Required

Department of Public Works
 County of Hawai'i
 Hilo, Hawai'i
 Phone: (808) 961-8321
 Fax: (808) 961-8630

NO. 576-19-024
 DATE: 7/12/17
 STATE PERMIT NO. 1A-H-0708

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 10 Feet 6 Inches Length: 31 Feet 0 Inches
 Weight: 74,128 Lbs. Width: 8 Feet 6 Inches

Type of Object or Equipment: MA320 Wheel Loader XL0695

Route of Travel: Origin Godfrey Brothers Inc
 Destination Mauuna Kea Observatory

Over Routes: Right on Maikiloa Rd, Right on Highway 190, Left on Daniel K. Inoué (Caddle), Left on Mauuna Kea access road

Time of Movement: Date 7/17/17 - 8/17/17
 Time: From 0800 To 1600

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 808-217-1277 FIRM: BJS Excavation & Hauling
 FIRM FAX: 808-371-8140 BY: Kiuhine Okimura
 FIRM EMAIL: bjsexcavation@bjskma.com (Electronic signature accepted)

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

Asi C...
 Director

Exhibit E
 TMT Memorandum cc: Applicant
 Hawai'i Police Dept. (Fax: 961-2228)

Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

LOAD LENGTHS ESCORT REQUIREMENTS	
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

PROJECTION LENGTH REQUIREMENT	
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

LOADED VEHICLE OPERATING SPEED ESCORT REQUIREMENTS	
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
15 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

Oversized and overweight vehicles movements are restricted from the hours of 8:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:

- Urban Hilo Area (Wailuku Bridge to Kawailani Street)
- Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)

Exceptions may be allowed in opposite direction of peak traffic flow

Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)

Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:

- Puainako Street (Kanoelehua Avenue to Komohana Street)
- Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)

Exceptions may be allowed in opposite direction of peak traffic flow

Night moves must be approved by the Design Engineer or District Engineer.	
Minimum requirements are as follows :	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

<u>Bridge Restrictions</u>	Single Axle > 42,000 lbs. or Tandem or Tridem Axle > 60,000 lbs.			
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
<u>MOST BRIDGES</u> W = 900(L+40)	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
<u>BRIDGES WITH LESS CAPACITY</u>	<u>Kamakoa Bridge No. 1 (MP 4.63)</u> Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	<u>Ninole Bridge (MP 56.58)</u> <u>Hilea Bridge (MP 57.72)</u> Route 11, past Pahala		<u>Aamakao Bridge (MP 26.58)</u> <u>Niulii Bridge (MP 27.28)</u> Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
	<u>ANY BRIDGE UNDER CONSTRUCTION</u> Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.			

<u>OTHER REQUIREMENTS :</u>
Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.
In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)
Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.

This space for issuing office:
 APPLICATION NO. 190584XBR
 Date Stamp

State of Hawaii
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION

DOT 4-005
 (HWY-C 07/15R)

**APPLICATION TO OPERATE OR TRANSPORT
 OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
 OVER STATE HIGHWAYS**

Date 7/08/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: BJ'S EXCAVATION & HAULING CO., INC

Address: PO BOX 1867 KAILUA-KONA HI 96745 Phone: 808-331-8120

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: GOODFELLOW BROTHERS INC Destination: MAUNA KEA OBSERVATORY-TMT

Over Routes: RIGHT ON WAIKOLOA ROAD, RIGHT ON HIGHWAY 190, LEFT ON DANIEL K INOUE (SADDLE), LEFT ON MAUNA KEA ACCESS ROAD TO THE TOP

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY OR COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT TUESDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: GOODFELLOW BROTHERS INC 68-1244 WAIKOLOA ROAD, WAIMEA 96743
NAME ADDRESS

Object or load to be moved: D10T DOZER W/O BLADE C252 109,715 LBS, 17' 5" L, 10' 4" W, 13' 4" H
WEIGHT, LENGTH, WIDTH, HEIGHT, ATTACHMENTS ETC

Method of movement: ON TRAILER
OR MOUNTED ON TOWED BY, UNDER OWN POWER, ETC

Check which and supply information: TRUCK SEMI-TRAILER DOLLY POLICE ESCORT
 TRUCK-TRACTOR TRAILER JEEP PRIVATE ESCORT
 OTHER OTHER

Make: 13' KENWORTH TRAIL KING
 No. of Axles: 4
 Gross Wt. (lbs.): 79,000 160,000
 Tare Wt. (lbs.): 25,340 23,880
 License: 449H DU 608HZC

Overall Dimensions of Vehicle including Load		
Width	10 ft.	4 in.
Length	69 ft.	7 in.
Height	15 ft.	4 in.
Rear Projection		
Length	ft.	in.
Height	ft.	in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	14320	3673	3673	3673	5970	5970	5970	5970	
With Load	15386	19970	19970	19970	20914	20914	20914	20914	
No. of Wheels	2	2	4	4	4	4	4	4	
Tire Sizes	24.50	24.50	24.50	24.50	22.50	22.50	22.50	22.50	
Axle Spacing (ft. & in.)	15.20	4.50	4.20	34.30	4.20	4.20	4.20		

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

[Signature]
 PERMITTEE
 By: BJ'S EXCAVATION & HAULING CO., INC

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 07/11/19 Approved: DIRECTOR OF TRANSPORTATION
 Permit No.: 19-H-0584 By: *[Signature]*
 Permit Fee: \$ 25.00 HAWAII DISTRICT ENGINEER
TITLE

Exhibit E
 TMT Memorandum

Department of Public Works
County of Hawai'i
Hilo, Hawai'i
Phone: (808) 961-8321
Fax: (808) 961-8630

NO. 576-19-030

DATE: 7/12/19

STATE PERMIT NO. 19-H-01784

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 17 Feet 4 Inches Length: 17 Feet 5 Inches
Weight: 104715 Lbs. Width: 10 Feet 4 Inches

Type of Object or Equipment DIOT DUMP W/O BRIDE C252

Route of Travel: Origin Goodfellow Brothers Inc
Destination Mauna Kea Observatory

Over Routes: Right on Waialeale Road, Right on Highway 190
Left in Daniel K. Inoué Road, left on Mauna Kea
access road

Time of Movement: Date 7/17/19 - 8/17/19
Time: From 8:00 To 1:00

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 808-277-9771 FIRM: DTS Excavation & Hauling
FIRM FAX: 808-771-9120 BY: K. HAWAII (Kimura)
FIRM EMAIL: bjsexcavation@bjskuna.com (Electronic signature accepted)

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

[Signature]
for Director

cc: Applicant
Hawai'i Police Dept. (Fax: 961-2228)

DPW Form 11
Revised 06/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highways With 11 FEET TO 12 FEET Wide Travel Lanes	Puuhiko St. Rte. 2600 Kilauea Ave. To Konaheana St. MP 0.16 To MP 1.63	Kohala Mt. Rd. Rte. 250 Kawailae Rd. To Aiea Pule Hwy. MP 2.0 To MP 21.8	Aiea Pule Hwy. Route 270 Aunaea Subd. Rd. To Poku Valley MP 23.8 To MP 28.9	South Kona Belt Road Rte. 11 Milohi Rd. To Honalo Jct. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over
ESCORT REQUIREMENTS	Maialoha South Point Rd. Rte. 11 Hanalei To South Point Rd. MP 69.9 To MP 69.5	Maialoha / Hawaii Belt Road. Rte. 190 Kaunuku Bridge to Sentic Lookout. MP 13.0 To MP 27.7	Kawailae Road. Rte. 18 Waialea Bridge to Kawailae Herd. MP 58.1 To MP 3.4	Kailua-Kona Urban Area Rte. 19 Honokohau Harbor (MP 97.55) to Rte. 11 Honalo. (MP 113.8)	
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements	
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide,	
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.00' to 13.99'	16.00' high OR	
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit	
Notice to Public, Staging Plans and Two Police with One Private Front Escorts	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)	
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)	

Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

HEIGHTS:	
Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

MOVE LENGTHS:	
Escort requirements for empty and loaded moves are as follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

PROJECTIONS:	
Escort requirements for front and/or rear projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

TRAVELING SPEED:	
Escort requirements for slow moving vehicles are shown below: Use highest posted speed limit on route.	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

DISTANCE TRAVELED:
Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

PEAK HOURS:
Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:
a. Urban Hilo Area (Walluku Bridge to Kawaihina Street)
b. Route 130 and Route 139 (Kaaau By-pass Road and Kaaau Town Junction to Pahoa Town)
Exceptions may be allowed in opposite direction of peak traffic flow
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)

SCHOOL TRAFFIC HOURS:
Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:
a. Puainako Street (Kanoelohua Avenue to Komohana Street)
b. Route 139 (Old Kaaau-Pahoa Road, Kaaau Town Section)
Exceptions may be allowed in opposite direction of peak traffic flow

NIGHT MOVES:
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows:
a. Provide police front and rear escorts
b. Provide full illumination of extremities of load (Flood Lights)
c. Provide side running lights
Other requirements may be required by the permit issuing office or as required by law

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

PAVEMENT STRUCTURES:			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES:				
Bridge Restrictions	Single Axle > 42,000 lbs. or Tandem or Tridem Axle > 60,000 lbs.			
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES W = 900(L+40)	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Ninole Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamakao Bridge (MP 26.68) Niuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
	ANY BRIDGE UNDER CONSTRUCTION Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.			

OTHER REQUIREMENTS :
UNUSUAL CONDITIONS: Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.
ROAD GRADES: In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waihinu, Kohala Mountain Road, Kuakini Highway, Keale-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)
REVISIONS: Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.

This space for issuing office:

APPLICATION NO. 190582B

Date Stamp

State of Hawaii
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

DOT 4-005
(HWY-C 07/15R)

APPLICATION TO OPERATE OR TRANSPORT
OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
OVER STATE HIGHWAYS

Date 7/08/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: BJ'S EXCAVATION & HAULING CO., INC

Address: PO BOX 1867 KAILUA-KONA HI 96745

Phone: 808-331-8120

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: GOODFELLOW BROTHERS Destination: MAUNA KEA OBSERVATORY-TMT

Over Routes: RIGHT ON WAIKOLOA ROAD, RIGHT ON HIGHWAY 190, LEFT ON DANIEL K INOUE (SADDLE), LEFT ON MAUNA KEA ACCESS

ROAD TO THE TOP

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY & COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT ON TURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: GOODFELLOW BROTHERS INC
NAME

68-1244 WAIKOLOA ROAD, WAIMEA 96743
ADDRESS

Object or load to be moved: CAT 336 EXCAVATOR S/N BH514 81,900 LBS, 37'L, 11'2"W, 12'H
WEIGHT, SQ. FT., ATTACHMENTS, ETC

Method of movement: ON TRAILER

Check which and supply information

- TRUCK TRAILER DOLLY
 TRUCK-TRACTOR TRAILER JEEP
 OTHER OTHER

- POLICE ESCORT
 PRIVATE ESCORT

Make: 13' KENWORTH

No. of Axles: 4

Gross Wt. (lbs.): 79,000

Tare Wt. (lbs.): 25,340

License: 449HDU

160,000

23,880

808HZC

Overall Dimensions of Vehicle Including Load		
Width	11 ft.	2 in.
Length	69 ft.	7 in.
Height	14 ft.	0 in.
Rear Projection:		
Length	ft.	in.
Height	ft.	in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	14320	3873	3673	3673	5870	5970	5970	5970	
With Load	14741	17389	17389	17389	16047	16047	16047	16047	
No. of Wheels	2	2	4	4	4	4	4	4	
Tire Sizes	24.50	24.50	24.50	24.50	22.50	22.50	22.50	22.50	
Axle Spacing (ft. & in.)	15.20	4.50	4.50	34.30	4.20	4.20	4.20		

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 07/17/19

Approved:

Kathleen Chen
PERMITTEE
By: BJ'S EXCAVATION & HAULING CO., INC

DIRECTOR OF TRANSPORTATION

By:

HAWAII DISTRICT ENGINEER

Permit No.: 19-H-0502

Permit Fee: \$ 5.00

Exhibit E
TMT Memorandum

Department of Public Works
County of Hawai'i
Hilo, Hawai'i
Phone: (808) 961-8321
Fax: (808) 961-8630

NO. 516-19-029
DATE: 7/12/19
STATE PERMIT NO. 19-H-0782

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 12 Feet 0 Inches Length: 37 Feet 0 Inches
Weight: 8100 Lbs. Width: 11 Feet 2 Inches

Type of Object or Equipment CAT 376 EX Dumper

Route of Travel: Origin Goodfellow Brothers Inc

Destination Mauna Kea Observatory

Over Routes: Right on Waialeale, Right on Highway 190,
Left in Mauna Kea Access Road, Left in Mauna
Kea Access Road

Time of Movement: Date 7/17/19 - 8/17/19
Time: From 8:00 To 1:00

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 808-271-1777 FIRM: BJS Excavation & Hauling

FIRM FAX: 808-771-8140 BY: Kristina Kimura
(Electronic signature accepted)

FIRM EMAIL: bjsexcavation@bjskma.com

Additional Conditions (for DPW use only):

1) Escorts: Police Front
 Private Rear

2) Check Vertical Clearance (vehicles over 14'-0" in height)

3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

A. C.
for Director

cc: Applicant
Hawai'i Police Dept. (Fax: 961-2228)

DPW Form 11
Revised 08/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highway: Wm 11-FL To 12-FL Wide Travel lanes	Punaluu St. Rte. 2090 Kilauea Ave. To Konoheana St. MP 0.16 To MP 1.53	Kohala Mt. Rd. Rte. 250 Kawainae Rd. To Akoni Pule Hwy. MP 2.0 To MP 21.8	Akoni Pule Hwy. Route 270 Arakoa Subd. Rd. To Poho Valley MP 23.8 to MP 28.9	South Kona Belt Road Rte. 11 Meoli Rd. To Honalo Jct. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	18.00' and over
ESCORT REQUIREMENTS	Naalehu-South Point Rd. Rte. 11 Honalo To South Point Rd. MP 60.9 To MP 68.5	Mamalaia / Hawaii Belt Road Rte. 190 Kaimuki Bridge to Scene Lookout. MP 130.0 to MP 27.7	Kawaihae Road Rte. 19 Waialeale Harbor. MP 59.1 to MP 3.4	Kailua-Kona Urban Area Rte. 19 Honokohau Harbor (MP 97.55) to Rte. 11 Honalo (MP 113.9)	
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements	
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide.	
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.00' to 13.99'	16.00' high OR	
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit	
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)	
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)	

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

HEIGHTS:	
Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

MOVE LENGTHS:	
Escort requirements for empty and loaded moves are as follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

PROJECTIONS:	
Escort requirements for front and/or rear projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

TRAVELING SPEED:	
Escort requirements for slow moving vehicles are shown below.	
Use highest posted speed limit on route.	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

DISTANCE TRAVELED:
 Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

PEAK HOURS:
 Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:

- Urban Hilo Area (Waituku Bridge to Kawaihina Street)
- Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)

Exceptions may be allowed in opposite direction of peak traffic flow
 Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)

SCHOOL TRAFFIC HOURS:
 Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:

- Puainako Street (Kanoelohua Avenue to Komohana Street)
- Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)

Exceptions may be allowed in opposite direction of peak traffic flow

NIGHT MOVES:	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows :	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

PAVEMENT STRUCTURES:			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES:				
Bridge Restrictions	Single Axle > 42,000 lbs. or		Tandem or Tridem Axle > 60,000 lbs.	
	1. Maximum speed over structure not to exceed 5 MPH. 2. No stopping on the structure. 3. No other vehicles on the bridge during crossing except passenger vehicles. 4. Provide front and rear escorts.			
MOST BRIDGES W = 900(L+40)	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Traller Axles	Approval Authority
	65,000 lbs. or less > 65,000 lbs.	28.00-ft. or more < 28.00-ft.	80,000 lbs. or less > 80,000 lbs	Hawaii District Approval Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoia Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Nihoa Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
	ANY BRIDGE UNDER CONSTRUCTION Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.			

OTHER REQUIREMENTS :	
UNUSUAL CONDITIONS: Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.	
ROAD GRADES: In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)	
REVISIONS: Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.	

This space for issuing office:
 APPLICATION NO. 190581B
 Date Stamp

State of Hawaii
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION

DOT 4-005
 (HWY-C 07/15R)

**APPLICATION TO OPERATE OR TRANSPORT
 OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
 OVER STATE HIGHWAYS**

Date 7/18/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: BJ'S EXCAVATION & HAULING CO., INC

Address: PO BOX 1867 KAILUA-KONA HI 96745

Phone: 808-331-8120

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: GOODFELLOW BROTHERS Destination: MAUNA KEA OBSERVATORY-TMT

Over Routes: RIGHT ON WAIKOLOA ROAD, RIGHT ON HIGHWAY 190, LEFT ON DANIEL K INOUE (SADDLE), LEFT ON MAUNA KEA ACCESS

ROAD TO THE TOP

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY OR COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT ON SATURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: GOODFELLOW BROTHERS INC

68-1244 WAIKOLOA ROAD, WAIMEA 96743
 ADDRESS

Object or load to be moved: CAT 336 EXCAVATOR S/N BH613 81,900 LBS, 37'L, 11'2"W, 12'H
STATE WEIGHT 30,000 LBS, ATTACHMENTS, ETC

Method of movement: ON TRAILER

Check which and supply information

TRUCK SEMI-TRAILER DOLLY
 TRUCK-TRACTOR TRAILER JEEP
 OTHER OTHER

POLICE ESCORT
 PRIVATE ESCORT

Make: 13' KENWORTH

TRAIL KING

Overall Dimensions of Vehicle Including Load			
Width	ft.	in.	
69	0	7	in.
Length	14	0	in.
Height			in.
Rear Projection:			
Length			in.
Height			in.

No. of Axles: 4

Gross Wt. (lbs.): 79,000

160,000

Tare Wt. (lbs.): 25,340

23,880

License: 449HOU

508H2C

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	14320	3673	3673	3673	5970	5970	5970	5970	
With Load	14741	17389	17389	17389	16047	16047	16047	16047	
No. of Wheels	2	2	4	4	4	4	4	4	
Tire Sizes	24.50	24.50	24.50	24.50	22.50	22.50	22.50	22.50	
Axle Spacing (ft. & in.)	15.20	4.50	4.50	34.30	4.20	4.20	4.20		

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

Kyphine Okima
 PERMITTEE
 By: BJ'S EXCAVATION & HAULING CO., INC

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 07/11/19

Approved: DIRECTOR OF TRANSPORTATION

Permit No.: 19-H-0581

By: *[Signature]*

Permit Fee: \$ 5.00

HAWAII DISTRICT ENGINEER
 TITLE

Exhibit E
 TMT Memorandum

Department of Public Works
County of Hawai'i
Hilo, Hawai'i
Phone: (808) 961-8321
Fax: (808) 961-8630

NO. 5/6-19-028
DATE: 7/12/19
STATE PERMIT NO. 19-H-0781

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 12 Feet 0 Inches Length: 37 Feet 0 Inches
Weight: 81900 Lbs. Width: 11 Feet 2 Inches

Type of Object or Equipment: CONcrete PUMP

Route of Travel: Origin Windfellow in the
Destination Mauna Kea Observatory

Over Routes: Right on Waialeale Road, Right on Highway 1A0,
Left on Daniel K Inoué Road, Left on Mauna Kea
access road

Time of Movement: Date 7/17/19 - 8/17/19
Time: From 8:00 To 1:00

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement, also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 808-271-0777 FIRM: MJS Excavation & Hauling
FIRM FAX: 808-271-8140 BY: Keith Kamuel
FIRM EMAIL: mjsexcavation@hiskona.com (Electronic signature accepted)

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

Keith Kamuel
for Director

cc: Applicant
Hawai'i Police Dept. (Fax: 961-2228)

OPW Form 11
Revised 05/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highways With 11 Ft. To 12.4 Ft. Wide Gravel Lanes	Puainako St. Rte. 2600 Kaanua Ave. To Konoeha St. MP 0.16 To MP 1.63	Kohala Mt. Rd. Rte. 250 Kawanae Rd. To Akoni Pule Hwy. MP 2.0 To MP 24.8	Akoni Pule Hwy. Route 270 Anakea Subd. Rd. To Poho Valley MP 23.8 To MP 28.9	South Kona Belt Road Rte. 14 Miejin Rd. To Honalo Jct. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over

ESCORT REQUIREMENTS	Nasietu-South Point Rd. Rt. 41 Honalo To South Point Rd. MP 60.9 To MP 69.5	Mamalahoe / Hawaii Belt Road. Rte. 190 Keonuku Bridge to Seaside Lookout MP 43.0 To MP 27.7	Kawailua Road. Rte. 19 Waiaka Bridge to Kawailua Harbor MP 59.1 To MP 34.5	Kailua-Kona Urban Area Rte. 19 Honokohau Harbor (MP 97.55) to Rte. 11 Honalo (MP 113.8)
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide.
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.0' to 13.99'	16.00' high OR
Police Front & Rear Escorts	14.0' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.0'0 to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

HEIGHT:	
Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

MOVE LENGTHS:	
Escort requirements for empty and loaded moves are as follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

PROJECTIONS:	
Escort requirements for front and/or rear projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

TRAVELING SPEED:	
Escort requirements for slow moving vehicles are shown below. Use digital posted speed limit on route.	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

DISTANCE TRAVELED:
 Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

PEAK HOURS:	
Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas	
a.	Urban Hilo Area (Wailuku Bridge to Kawaihina Street)
b.	Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)
Exceptions may be allowed in opposite direction of peak traffic flow	
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)	

SCHOOL TRAFFIC HOURS:	
Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following :	
a.	Puainako Street (Kanoiehua Avenue to Komohana Street)
b.	Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)
Exceptions may be allowed in opposite direction of peak traffic flow	

NIGHT MOVES:
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows:
a. Provide police front and rear escorts
b. Provide full illumination of extremities of load (Flood Lights)
c. Provide side running lights
Other requirements may be required by the permit issuing office or as required by law

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

PAVEMENT STRUCTURES:			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES:				
Bridge Restrictions	Single Axle > 42,000 lbs. or		Tandem or Tridem Axle > 60,000 lbs.	
	<ol style="list-style-type: none"> 1. Maximum speed over structure not to exceed 5 MPH. 2. No stopping on the structure. 3. No other vehicles on the bridge during crossing except passenger vehicles. 4. Provide front and rear escorts. 			
MOST BRIDGES W = 900(L+40)	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Nihoa Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
	ANY BRIDGE UNDER CONSTRUCTION Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.			

OTHER REQUIREMENTS :
UNUSUAL CONDITIONS Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.
ROAD GRADES: In areas without truck climbing lanes, trucks should pull over immediately before and after steep probing grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glenwood, Akaka Falls Road.)
REVISIONS: Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.

This space for issuing office:

APPLICATION NO. 190576XB

Date Stamp

State of Hawaii
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

DOT 4-005
(HWY-C 07/15R)

APPLICATION TO OPERATE OR TRANSPORT
OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
OVER STATE HIGHWAYS

Date 7/08/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: BJS EXCAVATION & HAULING CO., INC

Address: PO BOX 1867 KAILUA-KONA HI 96745

Phone: 808-331-8120

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: GOODFELLOW BROTHERS INC

Destination: MAUNA KEA OBSERVATORY-TMT

Over Routes: RIGHT ON WAIKOLOA ROAD, RIGHT ON HIGHWAY 190, LEFT ON DANIEL K INOUYE (SADDLE), LEFT ON MAUNA KEA ACCESS ROAD TO THE TOP

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT (TURDAY, SUNDAY, & HOLIDAYS)

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: GOODFELLOW BROTHERS INC

68-1244 WAIKOLOA ROAD, WAIMEA 96743

Object or load to be moved: CAT 349 EXCAVATOR-BH500

102,200 LBS. 40'9" L. 11'2" W. 12'1" H.
ST. WEIGHTS ATTACHMENTS, ETC

Method of movement:

Check which and supply information

- TRUCK
 TRUCK-TRACTOR
 OTHER

- TRAILER
 FLAT TRAILER
 OTHER
 TRAIL KING

- DOLLY
 JEEP

- POLICE ESCORT
 PRIVATE ESCORT

Make: 13' KENWORTH

No. of Axles: 4

Gross Wt. (lbs.): 79,000

Tare Wt. (lbs.): 21910

License: 449MDU

160,000
23,880
608H2C

Overall Dimensions of Vehicle Including Load		
Width	11 ft. 2 in.	
Length	69 ft. 7 in.	
Height	14 ft. 1 in.	
Rear Projection:		
Length	ft.	in.
Height	ft.	in.

	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
In contact with Pavement									
Gross Wt. (lbs.) Empty	14320	3673	3673	3673	5970	5970	5970	5970	
With Load	15285	18854	18854	18854	19890	19890	19890	19890	
No. of Wheels	2	2	4	4	4	4	4	4	
Tire Sizes	24.50	24.50	24.50	24.50	22.50	22.50	22.50	22.50	
Axle Spacing (ft. & in.)	15.20	4.50	4.50	34.30	4.20	4.20	4.20		

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

Kristina Kimura
PERMITTEE
By: BJS EXCAVATION & HAULING CO., INC

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 7/08/19

Approval

DIRECTOR OF TRANSPORTATION

Permit No.: 19-H-0576

By:

HAWAII DISTRICT ENGINEER

Permit Fee: \$ 25.00

TITLE

Exhibit E
TMT Memorandum

Department of Public Works
 County of Hawai'i
 Hilo, Hawai'i
 Phone: (808) 961-8321
 Fax: (808) 961-8630

NO. 576 19-027

DATE: _____

STATE PERMIT NO. 1A-H-0076

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 12 Feet 1 Inches Length: 40 Feet 9 Inches
 Weight: 102,200 Lbs. Width: 11 Feet 2 Inches

Type of Object or Equipment CONCRETE EX. PILING

Route of Travel: Origin Goodfellow Brothers Inc
 Destination Mauna Kea Interventway

Over Routes: Right on Waikulu Road, Right on Highway 190,
Left on Daniel K Inouye Road, Left on Mauna Kea
ACCESS ROAD

Time of Movement: Date 7/17/19 - 8/17/19
 Time: From 0700 To 1600

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 808-717-7777 FIRM: MIS Excavation & Hauling
 FIRM FAX: 808-771-8140 BY: KATHA UKIMU
 FIRM EMAIL: mjsexcavation@ijskna.com (Electronic signature accepted)

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

Ae C
 for Director

cc: Applicant
 Hawai'i Police Dept. (Fax: 961-2228)

DPW Form 11
 Revised 06/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highways With 14 FT. To 12 FT. Wide Travel Lanes	Puanako St. Rte. 200, Klaus Ave. To Konohana St. MP 0.16 To MP 1.93	Kohala Mt. Rd. Rte. 250, Kawaike Rd. to Akoni Pule Hwy. MP 2.0 to MP 21.8	Akoni Pule Hwy. Route 270, Ahakea Subd. Rd. to P. Olohu Valley MP 23.8 to MP 28.9	South Kona Belt Road Rte. 11, Milloli Rd. To Horatio Jct. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 18.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over
ESCORT REQUIREMENTS	Naalehu-South Point Rd. Rt. 11, Honouliuli To South Point Rd. MP 80.3 To MP 89.5	Mamalahoe / Hawaii Belt Road. Rte. 190, Keanakua Bridge to Scenic Lookout MP 13.0 to MP 27.7	Kawaike Road Rte. 19, Waiake Bridge to Kawaike Harbor MP 59.1 to MP 3.4	Kaliua-Kona Urban Area Rte. 19 Honokohau Harbor (MP 87.55) to Rte. 11 Horatio (MP 113.8)	
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements	
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide.	
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.00' to 13.99'	16.00' high OR	
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit	
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)	
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)	

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

HEIGHT:	
Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

MOVE LENGTHS:	
Escort requirements for empty and loaded moves are as follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

PROJECTIONS:	
Escort requirements for front and/or rear projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

TRAVELING SPEED:	
Escort requirements for slow moving vehicles are shown below. See highest posted speed limit on route.	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

DISTANCE TRAVELED:
Permittees may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

PEAK HOURS:
Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:
a. Urban Hilo Area (Wailuku Bridge to Kawaihina Street)
b. Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)
Exceptions may be allowed in opposite direction of peak traffic flow
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)

SCHOOL TRAFFIC HOURS:
Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:
a. Puainako Street (Kanoalehua Avenue to Komohana Street)
b. Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)
Exceptions may be allowed in opposite direction of peak traffic flow

NIGHT MOVES:	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows:	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

PAVEMENT STRUCTURES:			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES:				
Bridge Restrictitons	Single Axle > 42,000 lbs. or Tandem or Tridem Axle > 60,000 lbs.			
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES W = 900(L+40)	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Nihoa Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahaia		Aamakoo Bridge (MP 26.58) Niuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
	ANY BRIDGE UNDER CONSTRUCTION Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.			

OTHER REQUIREMENTS :
UNUSUAL CONDITIONS: Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.
ROAD GRADES: In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glenwood, Akaka Falls Road.)
REVISIONS: Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.

This space for issuing office:
 APPLICATION NO. 190572X
 Date Stamp

State of Hawaii
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION

DOT 4-005
 (HWY-C 07/15R)

APPLICATION TO OPERATE OR TRANSPORT
 OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
 OVER STATE HIGHWAYS

Date 7/08/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: BJ'S EXCAVATION & HAULING CO., INC

Address: PO BOX 1887 KAILUA-KONA HI 96745

Phone: 808-331-8120

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: GOODFELLOW BROTHERS

Destination: MAUNA KEA OBSERVATORY-TMT

Over Routes: RIGHT ON WAIKOLOA ROAD, RIGHT ON HIGHWAY 180, LEFT ON DANIEL K INOUE (SADDLE), LEFT ON MAUNA KEA ACCESS

ROAD TO THE TOP

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT ON SATURDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT:

OBJECT OR LOAD

Owner: GOODFELLOW BROTHERS INC
NAME

68-1244 WAIKOLOA ROAD, WAIMEA 96743
ADDRESS

Object or load to be moved: 740 ART ROCK TRUCK-DE238 72,399 LBS 35'7"L, 11'3"W, 9'10"H
WEIGHT, SIZE ATTACHMENTS, ETC

Method of movement: ON TRAILER

VEHICLE MOUNTED ON, TOWED BY, UNDER OWN POWER, ETC

Check which and supply information

- TRUCK SEMI-TRAILER DOLLY
 TRUCK-TRACTOR FURTER TRAILER JEEP
 OTHER OTHER

- POLICE ESCORT
 PRIVATE ESCORT

Make: 13' KENWORTH

TRAIL KING

No. of Axles: 4

Gross Wt. (lbs.): 79,000

180,000

Tare Wt. (lbs.): 21910

23880

License: 449HDU

608HZC

Overall Dimensions of Vehicle Including Load	
Width	11 ft. 3 in.
Length	69 ft. 7 in.
Height	11 ft. 1 in.
Rear Projection:	
Length	ft. in.
Height	ft. in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	14320	3673	3673	3673	5970	5970	5970	5970	
With Load	14710	15798	15798	15798	14878	14878	14878	14878	
No. of Wheels	2	2	4	4	4	4	4	4	
Tire Sizes	24.50	24.50	24.50	24.50	22.50	22.50	22.50	22.50	
Axle Spacing (ft. & in.)	15.20	4.60	4.50	34.30	4.20	4.20	4.20		

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

[Signature]
 PERMITTEE
 By: BJ'S EXCAVATION & HAULING CO., INC

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 7/08/19 Approved: *[Signature]* DIRECTOR OF TRANSPORTATION

Permit No.: 19-H-0572

By: *[Signature]*
 HAWAII DISTRICT ENGINEER
HTCE

Permit Fee: \$ 25.00

Department of Public Works
County of Hawai'i
Hilo, Hawai'i
Phone: (808) 961-8321
Fax: (808) 961-8630

NO. 54-19-026
DATE: 7/12/19
STATE PERMIT NO. 1A-H-0072

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 9 Feet 10 Inches Length: 70 Feet 7 Inches
Weight: 72,000 Lbs. Width: 11 Feet 3 Inches

Type of Object or Equipment: 744 ART RICK TRUCK
Route of Travel: Origin Goodfellow Brothers Inc
Destination Mauna Kea Observatory
Over Routes: Right on Waikila Rd. Right on Highway 190,
Left on Daniel K. Inouye Road. Left on Mauna Kea Access
Road

Time of Movement: Date 7/17/19 - 8/17/19
Time: From 1830 To 1000

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 808-271-5471 FIRM: BK Excavation & Hauling
FIRM FAX: 808-271-8140 BY: Kristin Kimura
FIRM EMAIL: bkexcavation@bjskma.com (Electronic signature accepted)

- Additional Conditions (for DPW use only):
- 1) Escorts: Police Front Private Rear
 - 2) Check Vertical Clearance (vehicles over 14'-0" in height)
 - 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

Ae C.
Director

cc: Applicant
Hawai'i Police Dept. (Fax: 961-2228)

DPW Form 11
Revised 06/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highways With 14 FT. to 12 FT. Wide Travel Lanes	Punaluu St. Rte. 200, Kulaea Ave. To Konoheua St. MP 0.16 To MP 1.63	Kohala Mt. Rd. Rte. 250, Kawailaa Rd. To Akoni Pule Hwy. MP 2.0 To MP 23.8	Akoni Pule Hwy. Route 270, Amakea Subs. Rd. To Eohele Valley MP 23.8 To MP 28.9	South Kona Belt Road, Rte. 11, Miloli Rd. To Honalo Jct. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over
ESCORT REQUIREMENTS	Naelehu-South Point Rd. Rte. 11, Honolulu to South Point Rd. MP 60.8 To MP 69.5	Mamalahoe / Hawaii Belt Road, Rte. 190, Keamuku Bridge to Spouting Lookout, MP 130 To MP 137.4	Kawaihae Road, Rte. 191, Waiake Bridge to Kawaihae Harbor, MP 59.1 To MP 3.4	Kailua-Kona Urban Area, Rte. 19 Honolulu Harbor, (MP 97.5) To Rte. 19 Honalo, (MP 113.9)	
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements	
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide.	
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.00' to 13.99'	16.00' high OR	
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit	
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)	
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)	

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

HEIGHTS:	
Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

MOVE LENGTHS:	
Escort requirements for empty and loaded moves are as follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

PROJECTIONS:	
Escort requirements for front and/or rear projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

TRAVELING SPEED:	
Escort requirements for slow moving vehicles are shown below: Use actual posted speed limit on route.	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

DISTANCE TRAVELED:
Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

PEAK HOURS:
Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:
a. Urban Hilo Area (Wailuku Bridge to Kawaihina Street)
b. Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)
Exceptions may be allowed in opposite direction of peak traffic flow
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)

SCHOOL TRAFFIC HOURS:
Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:
a. Puainako Street (Kanoiehewa Avenue to Komohana Street)
b. Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)
Exceptions may be allowed in opposite direction of peak traffic flow

NIGHT MOVES:	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows:	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

PAVEMENT STRUCTURES:			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES:				
Bridge Restrictions	Single Axle > 42,000 lbs. or		Tandem or Tridem Axle > 60,000 lbs.	
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
W = 900(L+40)	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct.			
	MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Nihoa Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niuli Bridge (MP 27.28) Route 270, past Halaula	
Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.				
ANY BRIDGE UNDER CONSTRUCTION				
Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.				

OTHER REQUIREMENTS :	
UNUSUAL CONDITIONS:	
Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.	
ROAD GRADES:	
In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahuaioa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)	
REVISIONS:	
Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.	

This space for issuing office:

APPLICATION NO. 190571X

Date Stamp

State of Hawaii
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

DOT 4-005
(HWY-C 07/15R)

**APPLICATION TO OPERATE OR TRANSPORT
OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
OVER STATE HIGHWAYS**

Date 7/08/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle. BJ'S EXCAVATION & HAULING CO., INC

Address: PO BOX 1887 KAILUA-KONA HI 96745

Phone: 808-331-8120

MOVEMENT: Oversize Overweight Oversize and Overweight Ping Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: GOODFELLOW BROTHERS Destination: MAUNA KEA OBSERVATORY-TMT

Over Routes: RIGHT ON WAIKOLOA ROAD, RIGHT ON HIGHWAY 190, LEFT ON DANIEL K INOUE (SADDLE), LEFT ON MAUNA KEA ACCESS ROAD TO THE TOP

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO CITY OR COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT ON FRIDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT:

OBJECT OR LOAD

Owner: GOODFELLOW BROTHERS INC
NAME

68-1244 WAIKOLOA ROAD, WAIMEA 96743
ADDRESS

Object or load to be moved: 740 ART ROCK TRUCK-DE228

72,390 LBS, 35'7"L, 11'3"W, 8'10"H
GROSS WEIGHT, VOL, ATTACHMENTS, ETC

Method of movement: ON TRAILER

OR MOUNTED ON, TOWED BY, UNDER OWN POWER, ETC

Check which and supply information

TRUCK
 TRUCK-TRACTOR
 OTHER

SEMI-TRAILER
 FULL-TRAILER
 OTHER

DOLLY
 JEEP

POLICE ESCORT
 PRIVATE ESCORT

Make: 13' KENWORTH

TRAIL KING

No. of Axles: 4

Gross Wt. (lbs.) 79,000

150,000

Tare Wt. (lbs.) 21910

23880

License: 449HDU

608HZC

Overall Dimensions of Vehicle including Load		
Width	11 ft.	3 in.
Length	69 ft.	7 in.
Height	11 ft.	1 in.
Rear Projection:		
Length	ft.	in.
Height	ft.	in.

	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
In contact with Pavement									
Gross Wt. (lbs.) Empty	14320	36793	3673	3573	5870	5970	5970	5970	
With Load	14710	15798	15798	15798	14878	14878	14878	14878	
No. of Wheels	2	2	4	4	4	4	4	4	
Tire Sizes	24.50	24.50	24.50	24.50	22.50	22.50	22.50	22.50	
Axle Spacing (ft. & in.)	15.20	4.50	4.50	34.30	4.20	4.20	4.20		

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

By: BJ'S EXCAVATION & HAULING CO., INC

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted, subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 07/10/19
Permit No.: 19-H-0571

Approved: _____
DIRECTOR OF TRANSPORTATION

By: _____
HAWAII DISTRICT ENGINEER

Permit Fee: \$ 25.00

Exhibit E
TMT Memorandum

Department of Public Works
 County of Hawai'i
 Hilo, Hawai'i
 Phone: (808) 961-8321
 Fax: (808) 961-8630

NO. 5/6-19-025
 DATE: 7/12/19
 STATE PERMIT NO. 19-H-0571

In compliance with Section 291-36, Hawai'i Revised Statutes, permission to move heavy vehicles and/or objects exceeding the height, width and length specified in Sections 291-34 and 35, Hawai'i Revised Statutes.

Overall dimensions and weight of loaded vehicle:

Height: 9 Feet 10 Inches Length: 39 Feet 7 Inches
 Weight: 72,000 Lbs. Width: 11 Feet 3 Inches

Type of Object or Equipment: 740 ART Ruck truck DE228

Route of Travel: Origin Goodfellow Brothers Inc
 Destination Muuna Kea Observatory

Over Routes: Right on Maikela Road, Right on Highway 140,
Left on Daniel K. Inouye Saddle, Left on Muuna
Kia access road

Time of Movement: Date 7/17/19 - 8/17/19
 Time: From 0830 To 1500

The undersigned applicant agrees to assume full responsibility for any loss or damages to County bridges, roads, life and/or property from such operation or moving and shall indemnify and hold harmless the County of Hawai'i and its officers or employees from any suits or claims. The Police Department shall be notified of the route and time of each movement; also the Police Department's approval shall be obtained prior to such movement, otherwise this permit will be considered void.

FIRM PHONE: 808-217-5977 FIRM: DT's Excavation & Hauling
 FIRM FAX: 808-271-8140 BY: Kristin Kinun
 FIRM EMAIL: bjsexcavation@bjsking.com *(Electronic signature accepted)*

Additional Conditions (for DPW use only):

- 1) Escorts: Police Front
 Private Rear
- 2) Check Vertical Clearance (vehicles over 14'-0" in height)
- 3) Maintain temporary bridge reinforcement at mile post 51, Saddle Road.

De C
 for Director

cc: Applicant
 Hawai'i Police Dept. (Fax: 961-2228)

DPW Form 11
 Revised 05/04/12

County of Hawai'i is an Equal Opportunity Provider and Employer.

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highways With 14'-6" To 17'-0" Wide Travel Lanes	Puuhiko St. Rte. 2000 Kulaia Ave. To Konoheia St. MP 0.16 To MP 1.63	Kohala Mt. Rd. Rte. 250 Kawaihae Rd. to Akoni Pule Hwy. MP 2.0 to MP 21.8	Akoni Pule Hwy. Route 270 Alinakee Subd. Rd. to Pohoia Valley MP 23.8 to MP 28.9	South Kona Belt Road Rte. 11 Mithril Rd. To Honalo Jct. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over

ESCORT REQUIREMENTS	Nai'alehu-South Point Rd. Rte. 11 Honalo to South Point Rd. MP 60.9 to MP 69.5	Mamalahoe / Hawaii Belt Road. Rte. 190 Keauhou Bridge to Spencr Lookout MP 130 to MP 27.7	Kawaihae Road. Rte. 19 Waialea Bridge to Kawaihae Harbor MP 59.1 to MP 3.2	Kailua-Kona Urban Area Rte. 19, Honokohau Harbor (MP 97.55) to Rte. 11 Honalo (MP 113.8)
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide,
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.0' to 13.99'	16.00' high OR
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

HEIGHTS:	
Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

MOVE LENGTHS:	
Escort requirements for empty and loaded moves are as follows:	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

PROJECTIONS:	
Escort requirements for front and/or rear projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

TRAVELING SPEED:	
Escort requirements for slow moving vehicles are shown below.	
Use highest posted speed limit on route.	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

DISTANCE TRAVELED:
Permittee may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

PEAK HOURS:
Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:
a. Urban Hilo Area (Weiluku Bridge to Kawaihāni Street)
b. Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)
Exceptions may be allowed in opposite direction of peak traffic flow
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)

SCHOOL TRAFFIC HOURS:
Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following
a. Puainako Street (Kanoelehua Avenue to Komohāna Street)
b. Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)
Exceptions may be allowed in opposite direction of peak traffic flow

NIGHT MOVES:	
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows:	
a.	Provide police front and rear escorts
b.	Provide full illumination of extremities of load (Flood Lights)
c.	Provide side running lights
Other requirements may be required by the permit issuing office or as required by law	

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

PAVEMENT STRUCTURES:			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES:				
Bridge Restrictions	Single Axle > 42,000 lbs. or		Tandem or Tridem Axle > 80,000 lbs.	
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
W = 900(L+40)	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct.			
	MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Ninole Bridge (MP 56.58) Hilea Bridge (MP 57.72) Route 11, past Pahala		Aamakao Bridge (MP 26.58) Niuliil Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
ANY BRIDGE UNDER CONSTRUCTION				
Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.				

OTHER REQUIREMENTS :	
UNUSUAL CONDITIONS:	
Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.	
ROAD GRADES:	
In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)	
REVISIONS:	
Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.	

Issuing office:
 N NO. 190561
 Date Stamp

State of Hawaii
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION

DOT-1003
 (HWY-C 07/15R)

APPLICATION TO OPERATE OR TRANSPORT
 OVERSIZE AND/OR OVERWEIGHT VEHICLES AND LOADS
 OVER STATE HIGHWAYS

Date 7/03/19

Pursuant to Chapter 291 Section 36, Hawaii Revised Statutes, as amended, the undersigned permittee hereby requests the Director of Transportation to issue a special permit to authorize the operation or movement of a vehicle or combination of vehicles or special mobile equipment of dimensions or weights, including loads or both, which exceed the provisions of Chapter 291 Section 34 and Section 35, Hawaii Revised Statutes, as amended.

ISSUE PERMIT TO:

Name of owner (or lessee) of vehicle: BJ'S EXCAVATION & HAULING CO., INC

Address: PO BOX 1887 KAILUA-KONA HI 96745

Phone: 808-331-8120

MOVEMENT: Oversize Overweight Oversize and Overweight Flag Projections Lights Wideload Sign

THIS APPLICATION IS FOR: Single Trip Continuous Trip Annual

ROUTE OF TRAVEL:

Origin: GOODFELLOW BOTHERS INC

Destination: MAUNA KEA OBSERVATORY

Over Routes: RIGHT ON WAIKOLOA ROAD, RIGHT ON HIGHWAY 190, LEFT ON DANIEL K INDUYE (SADDLE), LEFT ON MAUNA KEA ACCESS

ROAD TO THE TOP

(THIS PERMIT VALID ON STATE HIGHWAYS ONLY - OTHER ROUTES SUBJECT TO COUNTY REGULATIONS)

0830 to 1500 HRS 1800 to 0500 HRS 0030 to 0500 HRS NO MOVEMENT TUESDAY, SUNDAY, & HOLIDAYS

DATE OF MOVEMENT: 7/17/19-8/17/19

OBJECT OR LOAD

Owner: GOODFELLOW BROTHER INC

68-1244 WAIKOLOA ROAD, WAIMEA 96743
 ADDRESS

Object or load to be moved: D6 DOZER S/N: C268

47,000 LBS, 16'3" H, 13'7" W, 10'6" H
 ST. WEIGHT, ETC. ATTACHMENTS, ETC

Method of movement: ON TRAILER

OR MOUNTED ON, TOWED BY, UNDER OWN POWER, ETC

Check which and supply information

TRUCK
 TRUCK-TRACTOR
 OTHER

TRAILER
 TRAILER
 OTHER
 TRAIL KING

DOLLY
 JEEP

POLICE ESCORT
 PRIVATE ESCORT

Make: 98' PETERBILT

No. of Axles: 3

Gross Wt. (lbs.): 58,000

120,000

Tare Wt. (lbs.): 19,700

22,500

License: 521HDX

550HZE

Overall Dimensions of Vehicle Including Load		
Width	15 ft	7 in.
Length	60 ft	0 in.
Height	12 ft	6 in.
Clear Projection:		
Length	ft	in.
Height	ft	in.

In contact with Pavement	FRONT	AXLE 2	AXLE 3	AXLE 4	AXLE 5	AXLE 6	AXLE 7	AXLE 8	AXLE 9
Gross Wt. (lbs.) Empty	11886	3568	3588	7500	7500	7500			
With Load	12111	14328	14328	16052	16052	16052			
No. of Wheels	2	4	4	4	4	4			
Tire Sizes	24.50	24.50	24.50	24.50	24.50	24.50			
Axle Spacing (ft. & in.)	16.50	4.50	46.10	4.20	4.20				

The undersigned hereby certifies that the above-described vehicle shall be reduced to the minimum practicable dimension and weight before any movement takes place and that said vehicle shall be moved in compliance with the terms set forth in the Special Permit.

See General & Special Conditions to transport oversize and/or overweight vehicles and loads over State Highways included as attachments.

[Signature]
 PERMITTEE
 By: BJ'S EXCAVATION & HAULING CO., INC

SPECIAL PERMIT

Permission to operate the above-described oversize and/or overweight vehicle and load over the route on the date and time as stated above on the application is hereby granted; subject, however, to the General Conditions and any Special Provisions stated on the reverse side.

Date: 7/03/19

Approved:

[Signature]
 DIRECTOR OF TRANSPORTATION

Permit No.: 19-H-0561

By:

HAWAII DISTRICT ENGINEER

Permit Fee: \$ 5.00

SPECIAL CONDITIONS:

TRAVELING SPEED:

When traveling more than 25 mph below the speed limit, provide front and rear escorts and pull over when (conditions allow) at least every 15 minutes.

FOR ALL MOVES:

If the General Conditions require police escorts, but police escorts are not available, provide private front and rear escorts.

TRAFFIC CONTROL:

Permittee shall supply Traffic Control per Manual on Uniform Traffic Control Devices (MUTCD) as applicable to the conditions. Permittee shall submit a Traffic Control Plan to Hawaii District for approval prior to the movement of vehicles.

NOTIFICATION:

Permittee is allowed to move equipment 24 hours a day, 7 days a week for the period of the move and shall notify the Hawaii District Engineer at (808) 345-2105 a minimum of four (4) hours prior to each move.

HAWAII DISTRICT OVERSIZE AND/OR OVERWEIGHT REQUIREMENTS
GENERAL CONDITIONS FOR OVERSIZE AND/OR OVERWEIGHT VEHICLES ON STATE HIGHWAYS

ESCORT REQUIREMENTS	Highways With 11.5 Ft. To 12.5 Ft. Wide Travel Lanes	Punaluu St. Rte. 2000 Kilauea Ave. To Komohala St. MP 0.16 To MP 1.63	Kohala Mt. Rd. Rte. 250 Kawalea Rd. To Aieha Pule Hwy. MP 2.0 To MP 24.8	Akoni Pule Hwy. Route 279 Ainaka Subd. Rd. To Pokou Valley MP 23.8 To MP 28.9	South Kona Belt Road Rte. 11 Milohi Rd. To Honalo Jct. MP 89.0 To MP 113.9
Private Front Escort	12.00' to 13.99'	12.00' to 13.99'	Not Applicable	Not Applicable	Not Applicable
Private Front & Rear Escorts	14.00' to 15.99'	14.00' to 14.99'	9.00' to 11.99'	9.00' to 11.99'	10.00' to 11.99'
Police Front & Private Rear Escorts	16.00' to 16.99'	Not Applicable	12.00' to 13.99'	12.00' to 13.99'	12.00' to 13.99'
Police Front & Rear Escorts	17.00' to 17.99'	15.00' to 15.99'	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	18.00' to 19.99'	16.00' to 16.99'	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'
Special Approval & Requirements	20.00' and over	17.00' and over	16.00' and over	16.00' and over	16.00' and over

ESCORT REQUIREMENTS	Naelehi-South Point Rd. Rte. 114 Honolulu to South Point Rd. MP 60.9 To MP 69.5	Mamalahoe / Hawaii Belt Road. Rte. 190 Keamuku Bridge to Scenic Lookout MP 130.0 To MP 27.7	Kawahine Road. Rte. 19 Waiala Bridge to Kawahine Harbor MP 59.1 To MP 34.5	Kailua-Kona Urban Area Rte. 19 Honokohau Harbor (MP 97.55) to Rte. 11 Honalo (MP 113.8)
Private Front Escort	10.00' to 10.99'	10.00' to 10.99'	11.00' to 11.99'	Special Requirements
Private Front & Rear Escorts	11.00' to 11.99'	11.00' to 11.99'	12.00' to 12.99'	Greater than 12.00' wide.
Police Front & Private Rear Escorts	12.00' to 13.99'	12.00' to 13.99'	13.00' to 13.99'	16.00' high OR
Police Front & Rear Escorts	14.00' to 14.99'	14.00' to 14.99'	14.00' to 14.99'	Slower than 10 MPH below posted Speed Limit
Notice to Public, Staging Plans and Two Police with One Private Front Escorts *	15.00' to 15.99'	15.00' to 15.99'	15.00' to 15.99'	Recommend Night Move (10:00 pm to 5:00 am)
Special Approval & Requirements	16.00' and over	16.00' and over	16.00' and over	(Day moves may be approved on a case-by-case basis upon request.)

* Whenever Three (3) Escorts Are Required, All Vehicles Shall Have Radio Communications (escorts and permit vehicles).

HEIGHT:	
Permit applicant shall be responsible to check overhead clearances along the route.	
Heights up to 14.00'	Follow other requirements
Heights 14.01' to 15.00'	Permit Required
Heights over 15.00'	Check Overpasses and Utility Crossings. May require special conditions.
Heights 16.00 and greater	See special requirements within Kailua-Kona Urban Area (see page 1)

MOVE LENGTHS:	
Escort requirements for empty and loaded moves are as follows	
LOAD LENGTHS	ESCORT REQUIREMENTS
Up To 70.00'	No escorts required.
70.01' To 80.00'	Provide private front escort
80.01' To 100.00'	Provide private front and rear escorts
Over 100.00'	Provide police front and rear escorts. May require special conditions.
Above requirements apply to full 12-foot wide pavement traveled ways only. Requirements for Highways with narrow lanes are determined by issuing office. Consideration will be given to intermediate steering systems for minimizing of restrictions with documentation or certification of tracking ability of combinations.	

PROJECTIONS:	
Escort requirements for front and/or rear projections are as follows:	
PROJECTION LENGTH	REQUIREMENT
4' to 10', less than 7' high	Provide private escort at projection
Greater than 10'	Additional requirements as determined by the issuing office

TRAVELING SPEED:	
Escort requirements for slow moving vehicles are shown below. Use highest posted speed limit on route.	
LOADED VEHICLE OPERATING SPEED	ESCORT REQUIREMENTS
Speed limit to 15 mph below speed limit	See Special Requirements within Kailua-Kona Urban Area (see page 1)
16 mph to 25 mph below speed limit	Provide police front and rear escorts
More than 25 mph below speed limit	Special approval and additional requirements as determined by the issuing office

DISTANCE TRAVELED:
Permitter may submit a request for the waiving of escort requirements if move is less than one (1) mile long on State Highway

PEAK HOURS:	
Oversized and overweight vehicles movements are restricted from the hours of 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., unless otherwise noted, for the following areas:	
a.	Urban Hilo Area (Wailuku Bridge to Kawailani Street)
b.	Route 130 and Route 139 (Keaau By-pass Road and Keaau Town Junction to Pahoa Town)
Exceptions may be allowed in opposite direction of peak traffic flow	
Also, see Special Requirements within Kailua-Kona Urban Area (see page 1)	

SCHOOL TRAFFIC HOURS:	
Besides Peak Hour Restrictions, oversized and overweight vehicle movements are restricted from the hours of 2:00 p.m. to 2:45 p.m. on weekdays (except Wednesdays) and 1:00 p.m. to 1:45 p.m. on Wednesdays, for the following:	
a.	Puainako Street (Kanoelohua Avenue to Komohana Street)
b.	Route 139 (Old Keaau-Pahoa Road, Keaau Town Section)
Exceptions may be allowed in opposite direction of peak traffic flow	

NIGHT MOVES :
Night moves must be approved by the Design Engineer or District Engineer. Minimum requirements are as follows :
a. Provide police front and rear escorts
b. Provide full illumination of extremities of load (Flood Lights)
c. Provide side running lights
Other requirements may be required by the permit issuing office or as required by law

WEIGHT LIMITATIONS :

Weight limitations are subject to review and approval as follows :

PAYEMENT STRUCTURES :			
SINGLE AXLE	TANDEM AXLE	TRIDEM AXLE	APPROVAL AUTHORITY
Up to 40,000 lbs.	Up to 80,000 lbs.	Up to 90,000 lb. Rte 11 only	Hawaii District Approval
Over 40,000 lbs.	Over 80,000 lbs.	Over 90,000 lb. Rte 11 only	Requires Honolulu (HWY-LS) Approval

BRIDGES :				
Bridge Restrictitons	Single Axle > 42,000 lbs. or Tandem or Tridem Axle > 60,000 lbs.			
	<ol style="list-style-type: none"> Maximum speed over structure not to exceed 5 MPH. No stopping on the structure. No other vehicles on the bridge during crossing except passenger vehicles. Provide front and rear escorts. 			
MOST BRIDGES W = 900(L+40)	Combined Weight Tractor Rear Axles or	Spacing: Last Tractor Axle to First Trailer Axle or	Combined Weight Trailer Axles	Approval Authority
	65,000 lbs. or less	28.00-ft. or more	80,000 lbs. or less	Hawaii District Approval
	> 65,000 lbs.	< 28.00-ft.	> 80,000 lbs	Requires Honolulu (HWY-DB) Approval
BRIDGES WITH LESS CAPACITY	Kamakoa Bridge No. 1 (MP 4.63) Route 190, Waimea side of Saddle Road Jct. MAX. WEIGHT PER TANDEM = 61,000 lbs.			
	Nihoa Bridge (MP 66.58) Hilea Bridge (MP 67.72) Route 11, past Pahala		Aamakao Bridge (MP 28.58) Niuli Bridge (MP 27.28) Route 270, past Halaula	
	Every overweight permit must go to HWY-DB in Honolulu for approval until further notice.			
	ANY BRIDGE UNDER CONSTRUCTION Width and length restrictions and additional conditions may be required depending on detour road and construction limitations whenever a bridge is being repaired or reconstructed.			

OTHER REQUIREMENTS :
UNUSUAL CONDITIONS :
Restrictions and/or additional conditions may be required for special events such as the Ironman Triathlon, parades, road races, highway construction, etc.
ROAD GRADES :
In areas without truck climbing lanes, trucks should pull over immediately before and after steep prolong grades to allow the general public to pass. (E.g. Kawaihae Road, Ahualoa, Waiohinu, Kohala Mountain Road, Kuakini Highway, Keala-O-Keawe Road, Volcano Highway, Mountain View to Glennwood, Akaka Falls Road.)
REVISIONS :
Provisions described above are subject to change at any time and on a case by case basis. The Hawaii Trucking Association shall be informed of these revisions.



Paul Neves

November 7, 2020 ·

5

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Exhibit E
TMT Memorandum

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Ku Ching shared a memory.

July 15 ·

MAUNA KEA! Pictures to be forever etched in our minds! Aloha 'Aina!
Malama 'Aina! It's - the sacrifices of our Kupuna!

2 Years Ago

See Your Memories



Cynthia Franklin

July 15, 2019 ·

Heroes. Kia'i locked to the cattle gate blocking the access road, a line of beloved kupuna, and 100s more, standing this morning for Mauna Kea, facing a militarized police armed with nothing but aloha 'aina. #TMTshutdown #KūKiaiMauna #ImuaTMT



10

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Exhibit E
TMT Memorandum

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Pu'uhonua o Pu'uhuluhulu Maunakea

July 20, 2019 ·



-3:38

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Live from the Mauna. Update with Kaleikoa Ka'eo and Kealoha Pisciotta.

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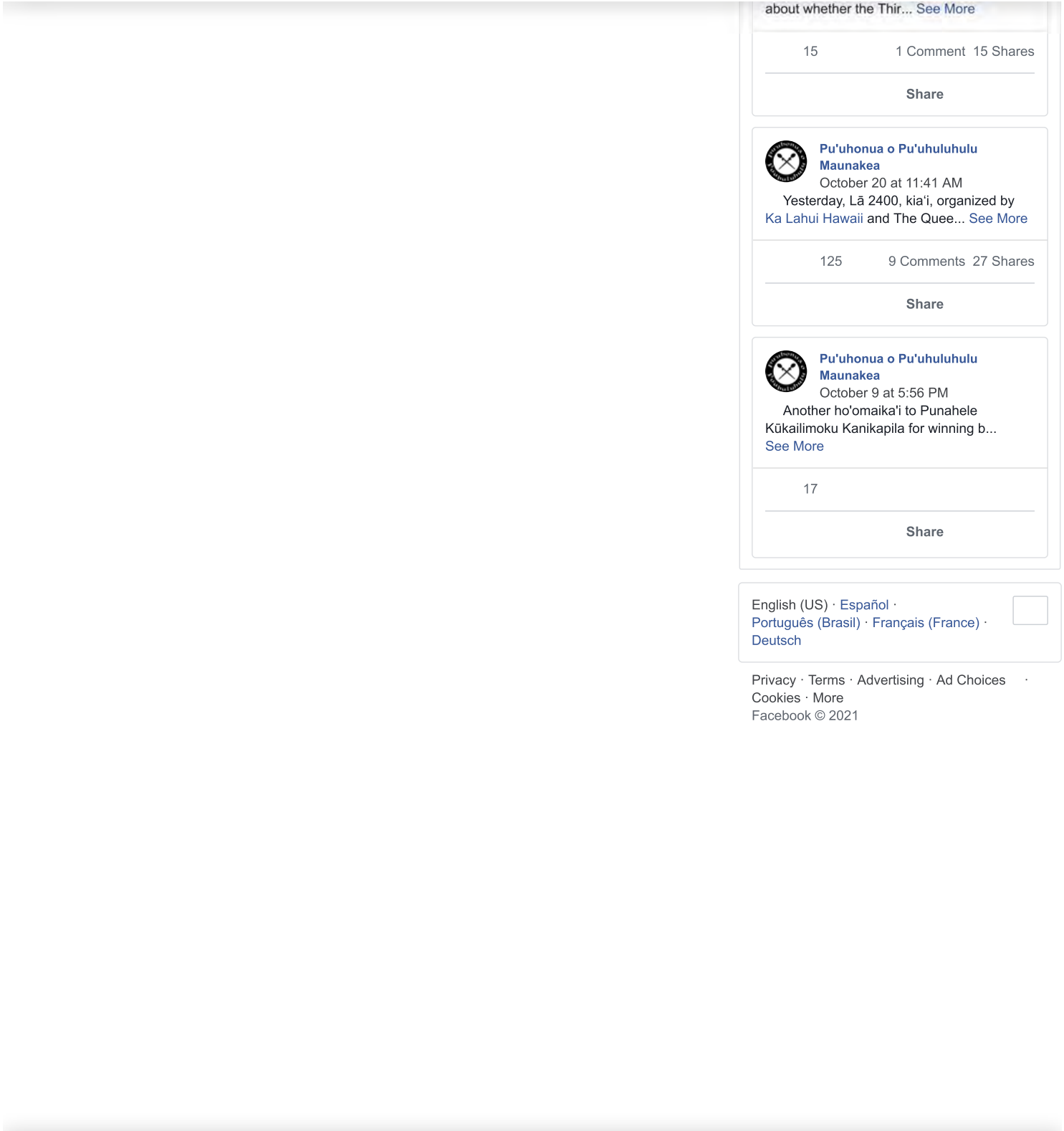
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TMT Memorandum

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TMT Memorandum

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CARRIE K. S. OKINAGA 5958-0
University General Counsel

GARY Y. TAKEUCHI 3261-0
University Deputy General Counsel

JESSE K. SOUKI 8213-0
Associate General Counsel

UNIVERSITY OF HAWAI'I

2444 Dole Street, Bachman Hall 110

Honolulu, Hawai'i 96822

Email: souki@hawaii.edu

Telephone: (808) 956-2211

Facsimile: (808) 956-2109

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
MEMORANDUM IN OPPOSITION TO
MAUNA KEA HUI'S MOTION TO REOPEN
HEARING TO HEAR MOTION TO
CONFIRM NON-COMPLIANCE WITH
CONDITION NO. 4, OR, ALTERNATIVELY,
PETITION FOR DECLARATORY ORDERS
CONCERNING THE SAME; CERTIFICATE OF
SERVICE**

**UNIVERSITY OF HAWAI'I AT HILO'S SUBSTANTIVE JOINDER TO
TMT INTERNATIONAL OBSERVATORY LLC'S MEMORANDUM IN OPPOSITION TO
MAUNA KEA HUI'S MOTION TO REOPEN HEARING TO HEAR MOTION TO
CONFIRM NON-COMPLIANCE WITH CONDITION NO. 4, OR,
ALTERNATIVELY, PETITION FOR DECLARATORY ORDERS CONCERNING 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**") "Memorandum in Opposition
to Mauna Kea Hui's Motion to Reopen Hearing to Hear Motion to Confirm Non-Compliance

with Condition No. 4, or, Alternatively, Petition for Declaratory Orders Concerning the Same” (“**TIO Memo**”), filed on November 4, 2021.

On May 24, 2021, Petitioners Mauna Kea Anaina Hou, Kealoha Pisciotta, Clarence Kukauakahi Ching, Deborah J. Ward, Paul K. Neves, and KAHEA: The Hawaiian-Environmental Alliance (collectively, “**Petitioners**”) filed their “Motion to Reopen Hearing to Hear Motion to Confirm Non-Compliance With Condition No. 4, or Alternatively, Petition for Declaratory Orders Concerning the Same” (“**Petition**”) with the Board of Land and Natural Resources (“**Board**”). In response to the Petition, the Board determined that the Petition does not seek reconsideration of the Decision and Order for Conservation District Use Permit (“**CDUP**”) HA-3568 for the Thirty Meter Telescope on Maunakea (“**TMT Project**”), and does not comply with the requirements of Hawai‘i Administrative Rules (“**HAR**”) § 13-1-39, which governs the reconsideration of a Board’s decision on the merits. Instead, the Board deemed the Petition a petition for a declaratory ruling pursuant to Hawai‘i Revised Statutes § 91-8 and HAR § 13-1-27. Minute Order No. 1 at 1.

The Petition is part of an ongoing strategy of attempting to relitigate CDUP HA-3568, which was lawfully approved by the Board on September 17, 2017, as confirmed by the Hawai‘i Supreme Court in 2018, to allow construction of the TMT Project. For example, here is a list of some of the litigation and challenges brought by one or combinations of the Petitioners to date:

- (1) Appeal of the first TMT Project CDUP; the CDUP was overturned by the Hawai‘i Supreme Court. *See Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res.*, 136 Hawai‘i 376, 363 P.3d 224 (2015) (includes all Petitioners as named parties except for Kealoha Pisciotta).

- (2) Appeal of CDUP HA-3568; the CDUP was affirmed by the Hawai'i Supreme Court. *See Matter of Conservation Dist. Use Application HA-3568*, 143 Hawai'i 379, 431 P.3d 752 (2018) (includes all Petitioners as parties).
- (3) Lawsuit filed in the Hawai'i Circuit Court of the Third Circuit in July 2019, unsuccessfully arguing that TIO failed to post security for construction of the TMT Project; appeal to the Hawai'i Intermediate Court of Appeals pending. *See Mauna Kea Anaina Hou v. David Ige*, Civ. No. 19-1-0177 (includes all Petitioners as parties except for Deborah J. Ward and KAHEA).

The instant challenge filed by Petitioners is perhaps the most vexing as it attempts to read ambiguity into permit language where there is none.

The University substantively joins and supports the arguments for denying the Petition in its entirety as argued in the TIO Memo. First, Petitioners' request for a declaratory order is procedurally defective, because under established law, the declaratory ruling procedure cannot be used to review previously-made agency decisions. Second, even assuming the Board considers the substance of the Petitioners' allegations, as set out in the TIO Memo and approved by the Chair of the Board on May 4, 2021, Condition 4 has been satisfied: the removal of the unpermitted ahu; on-site testing and survey work; kick-off meeting with contractor and others to discuss construction procedures, safety and other requirements; and inspection, certification, and mobilization of the construction equipment constituted "[a]ny work done" or construction to be done on the land as required by Condition 4 of CDUP HA-3568, especially viewed in their entirety. And finally, since Petitioners (individually or as members of various organizations) actively participated in or supported the protests to actually block the heavy

construction equipment and vehicles from accessing the TMT Project site, the Petition should be denied outright based on equity and fairness. It would be an improper remedy for the Board to provide relief of any kind to Petitioners in such circumstances.

For the above reasons, the University substantively joins the TIO Memo and respectfully requests that the Board deny the Petition in its entirety.

DATED: Honolulu, Hawai'i, November 4, 2021.

/s/ Jesse K. Souki

CARRIE K. S. OKINAGA

University General Counsel

GARY Y. TAKEUCHI

University Deputy General Counsel

JESSE K. SOUKI

Associate General Counsel

Attorneys for

UNIVERSITY OF HAWAI'I AT HILO

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

Case No. HA-22-02

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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

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

UNIVERSITY OF HAWAI'I AT HILO'S SUBSTANTIVE JOINDER TO TMT INTERNATIONAL OBSERVATORY LLC'S MEMORANDUM IN OPPOSITION TO MAUNA KEA HUI'S MOTION TO REOPEN HEARING TO HEAR MOTION TO CONFIRM NON-COMPLIANCE WITH CONDITION NO. 4, OR, ALTERNATIVELY, PETITION FOR DECLARATORY ORDERS CONCERNING THE SAME

Was duly served upon the following parties, by email, on November 4, 2021:

Linda L.W. Chow
Laure K. Chun
Deputy Attorneys General
Linda.L.Chow@hawaii.gov
Lauren.K.Chun@hawaii.gov
Attorneys for the Board of Land and Natural Resources

J. Douglas Ing
Brian A. Kang
Ross Shinyama
Summer H. Kaiawe
Watanabe Ing LLP
douging@wik.com
bkang@wik.com
rshinyama@wik.com
skaiawe@wik.com
Attorneys for TMT

Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
The Temple of Lono

Lincoln S.T. Ashida
Newton J. Chu
Torkildson, Katz, Moore, & Harris
lsa@torkildson.com
njc@torkildson.com
Attorneys for Perpetuating Unique Educational Opportunities (PUEO)

Harry Fergerstrom
hankhawaiian@yahoo.com

Richard L DeLeon
kekaukike@msn.com

Kalikolehua Kanaele
akulele@yahoo.com

Stephanie-Malia:Tabbada
s.tabbada@hawaiiintel.net

Tiffnie Kakalia
tiffniekakalia@gmail.com

Glen Kila
makakila@gmail.com

Richard Naiwieha Wurdeman
RNWurdeman@RNWLaw.com
Bianca Isaki
bianca.isaki@gmail.com
*Attorneys for the Mauna Kea
Hui*

Mehana Kihoi
uhiwai@live.com

Dwight J. Vicente
[dwightjvicente@gmail.com](mailto:dwrightjvicente@gmail.com)

C. M. Kaho'okahi Kanuha
kahookahi@gmail.com

Brannon Kamahana Kealoha
brannonk@hawaii.edu

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

William Freitas
kukulukuula@gmail.com

Cindy Freitas
hanahanai@hawaii.rr.com

J. Leina'ala Sleightholm
leina.ala.s808@gmail.com

Michael Cain
Michael.cain@hawaii.gov
Custodian of the Records

DATED: Honolulu, Hawai'i, November 4, 2021.

/s/ Jesse K. Souki
CARRIE K. S. OKINAGA
University General Counsel
GARY Y. TAKEUCHI
University Deputy General Counsel
JESSE K. SOUKI
Associate General Counsel
Attorneys for Respondent
UNIVERSITY OF HAWAI'I AT HILO

TORKILDSON KATZ
HETHERINGTON HARRIS & KNOREK
Attorneys at Law, A Law Corporation

NEWTON J. CHU 6537-0
(njc@torkildson.com)
LINCOLN S. T. ASHIDA 4478-0
(lsa@torkildson.com)
120 Pauahi Street, Suite 312
Hilo, HI 96720
Telephone: (808) 961-0406
Facsimile: (808) 961-3815

Attorneys for PERPETUATING UNIQUE
EDUCATIONAL OPPORTUNITIES (“PUEO”)

BOARD OF NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF

Case No. HA-22-02

The Petition Of Mauna Kea Hui for a
Declaratory Offer Filed May 24, 2021.

PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES’ (“PUEO”)
SUBSTANTIVE JOINDER TO TMT
INTERNATIONAL OBSERVATORY LLC’S
MEMORANDUM IN OPPOSITION TO
MAUNA KEA HUI’S MOTION TO REOPEN
HEARING TO HEAR MOTION TO
CONFIRM NON-COMPLIANCE WITH
CONDITION NO. 4, OR ALTERNATIVELY,
PETITION FOR DECLARATORY ORDERS
CONCERNING THE SAME, AS FILED ON
NOVEMBER 4, 2021; CERTIFICATE OF
SERVICE

**PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES’ (“PUEO”)
SUBSTANTIVE JOINDER TO TMT INTERNATIONAL OBSERVATORY LLC’S
MEMORANDUM IN OPPOSITION TO MAUNA KEA HUI’S MOTION TO REOPEN
HEARING TO HEAR MOTION TO CONFIRM NON-COMPLIANCE WITH
CONDITION NO. 4, OR ALTERNATIVELY, PETITION FOR DECLARATORY
ORDERS CONCERNING THE SAME, AS FILED ON NOVEMBER 4, 2021**

PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES (“PUEO”), by and

through their undersigned counsel, substantively joins “TMT INTERNATIONAL

Exhibit G
PUEO joinder

Received
Department of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
Nov 04 2021 14:51

OBSERVATORY LLC’S MEMORANDUM IN OPPOSITION TO MAUNA KEA HUI’S MOTION TO REOPEN HEARING TO HEAR MOTION TO CONFIRM NON-COMPLIANCE WITH CONDITION NO. 4, OR ALTERNATIVELY, PETITION FOR DECLARATORY ORDERS CONCERNING THE SAME” as filed on November 4, 2021, with respect to consideration by the Board of Land and Natural Resources (“BLNR”) of Petitioners MAUNA KEA ANAINA HOU, KEALOHA PISCIOTTA, CLARENCE KUKAUAKAHI CHING, DEBORAH J. WARD, PAUL K. NEVES, and KAHEA: THE HAWAIIAN ENVIRONMENTAL ALLIANCE’S (collectively “Petitioners”) unclean hands in bringing this petition forward.

On July 16, 2019, our Island of Hawai`i observed the unfortunate incitement and use of physical barriers by Petitioners and other protesters of the Thirty Meter Telescope (“TMT”), in preventing the lawful passage of heavy equipment vehicles to the site of TMT on the Mauna Kea summit. The physical barriers illegally erected on the Mauna Kea Access Road was followed by what amounted to illegal camping and the building of unpermitted structures that trespassed on land owned by the State of Hawai`i.

Despite the protestors not being *Pono* in seeking to have their concerns adjudicated and decided by a court, they openly advocated that “Hawaiians” opposed the building of the TMT during their protest that involved the chaining of *kupuna* to the Mauna Kea Access Road. The protestors sought to essentially “hijack” the Native Hawaiian population in their misguided attempt to convince others that all Native Hawaiians opposed the building of the TMT.

PUEO always has, and always will, respect the right of all persons and entities to hold their beliefs. Controversies should be decided before recognized tribunals, such as the BLNR, and not on the cold pavement of the Access Road.

However even controversies before a tribunal should not be the product of a person or a party's own making. To now cry foul based upon the unlawful actions of those involved in the physical protest is not *Pono*. Petitioners have not acted with *Ahonui*, but have instead allowed their self-righteous beliefs to wander into the realm of desperation.

Whether you support the building of TMT or not, PUEO cannot support the bringing of any claim based upon the complaining party's own doing. The government authorities on July 16, 2019 made the decision to stand down and not pursue a law enforcement resolution to the protest. The unclean hands of the protestors should not be rewarded, based on the government's actions in seeking a peaceful resolution.

PUEO appreciates the opportunity to *Pa`a ka waha* on this very important issue.

Based on the foregoing PUEO respectfully joins TMT International Observatories LLC's opposition to deny the Petition, on the basis of the unclean hands doctrine.

DATED: Hilo, Hawai`i, November 4, 2021.

TORKILDSON KATZ
HETHERINGTON HARRIS & KNOREK
Attorneys at Law, A Law Corporation

/s/ Lincoln S. T. Ashida
Newton J. Chu
Lincoln S. T. Ashida

Attorneys for PERPETUATING UNIQUE
EDUCATIONAL OPPORTUNITIES ("PUEO")

BOARD OF NATURAL RESOURCES**STATE OF HAWAII**

IN THE MATTER OF

The Petition Of Mauna Kea Hui for a
Declaratory Offer Filed May 24, 2021.

Case No. HA-22-02

CERTIFICATE OF SERVICE

RE: PERPETUATING UNIQUE
EDUCATIONAL OPPORTUNITIES'
("PUEO") SUBSTANTIVE JOINDER TO
TMT INTERNATIONAL OBSERVATORY
LLC'S MEMORANDUM IN OPPOSITION
TO MAUNA KEA HUI'S MOTION TO
REOPEN HEARING TO HEAR MOTION TO
CONFIRM NON-COMPLIANCE WITH
CONDITION NO. 4, OR ALTERNATIVELY,
PETITION FOR DECLARATORY ORDERS
CONCERNING THE SAME, AS FILED ON
NOVEMBER 4, 2021

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, a true and correct copy of the above-described document was duly served upon the following, via electronic mail, as indicated below:

<p>Linda L.W. Chow Lauren K. Chun Deputy Attorneys General Linda.L.Chow@hawaii.gov Lauren.K.Chun@hawaii.gov</p> <p><i>Attorneys for the Board of Land and Natural Resources</i></p>	<p>Harry Fergerstrom hankhawaiian@yahoo.com</p>	<p>Maelani Lee maelanilee@yahoo.com</p>
<p>Jesse K. Souki Associate General Counsel University of Hawai'i souki@hawaii.edu</p> <p><i>Attorney for University of Hawai'i, Hilo</i></p>	<p>Richard L DeLeon kekaukike@msn.com</p>	<p>Lanny Alan Sinkin lanny.sinkin@gmail.com <i>The Temple of Lono</i></p>

<p>Richard Naiwieha Wurdeman <u>RNWurdeman@RNWLaw</u> Bianca Isaki <u>bianca.isaki@gmail.com</u></p> <p><i>Attorneys for the Mauna Kea Hui</i></p>	<p>Mehana Kihoi <u>uhiwai@live.com</u></p>	<p>Kalikolehua Kanaele <u>akulele@yahoo.com</u></p>
<p>J. Douglas Ing Ross Shinyama Summer H. Kaiawe Watanabe Ing LLP <u>douging@wik.com</u> <u>rshinyama@wik.com</u> <u>skaiawe@wik.com</u></p> <p><i>Attorneys for TMT International Observatory, LLC</i></p>	<p>C. M. Kaho'okahi Kanuha <u>kahookahi@gmail.com</u></p>	<p>Stephanie-Malia:Tabbada <u>s.tabbada@hawaiiantel.net</u></p>
	<p>Joseph Kualii Lindsey Camara <u>kualiic@hotmail.com</u></p>	<p>Tiffnie Kakalia <u>tiffniekakalia@gmail.com</u></p>
	<p>Cindy Freitas <u>hanahanai@hawaii.rr.com</u></p>	<p>Glen Kila <u>makakila@gmail.com</u></p>
		<p>Dwight J. Vicente <u>dwightjvicente@gmail.com</u></p>
		<p>William Freitas <u>kukulukuula@gmail.com</u></p>
		<p>J. Leina'ala Sleightholm <u>leina.ala.s808@gmail.com</u></p> <p>Michael Cain <u>Michael.cain@hawaii.gov</u> <i>Custodian of the Records</i></p>

DATED: Honolulu, Hawai'i, November 4, 2021.

TORKILDSON KATZ
HETHERINGTON HARRIS & KNOREK
Attorneys at Law, A Law Corporation

/s/ Lincoln S. T. Ashida
Newton J. Chu
Lincoln S. T. Ashida

Attorneys for PERPETUATING UNIQUE
EDUCATIONAL OPPORTUNITIES (“PUEO”)

E. Kalani Flores, Flores-Case ‘Ohana
P.O. Box 6918
Kamuela, Hawaii 96743
Email: 08ef80@gmail.com

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAI‘I

IN THE MATTER OF	)	Case No. HA-22-02
)	
The Petition of Mauna Kea Hui for a	)	MEMORANDUM IN SUPPORT OF
Declaratory Order Filed May 24, 2021.	)	MAUNA KEA HUI’S MOTION TO
	)	REOPEN HEARING TO HEAR
	)	MOTION TO CONFIRM
	)	NON-COMPLIANCE WITH
	)	CONDITION NO. 4, OR,
	)	ALTERNATIVELY, PETITION FOR
	)	DECLARATORY ORDERS
	)	CONCERNING THE SAME;
	)	DECLARATION OF E. KALANI
	)	FLORES; EXHIBITS “A” - “H”;
	)	CERTIFICATE OF SERVICE
)	
)	
)	

**MEMORANDUM IN SUPPORT OF MAUNA KEA HUI’S MOTION TO REOPEN
HEARING TO HEAR MOTION TO CONFIRM NON-COMPLIANCE WITH
CONDITION NO. 4, OR, ALTERNATIVELY,
PETITION FOR DECLARATORY ORDERS CONCERNING THE SAME**

I. INTRODUCTION

E. KALANI FLORES (“Flores”), in capacity as an individual as well as a representative of the FLORES-CASE ‘OHANA (“FCO”), respectfully files this Memorandum in Support (“Memorandum”) of the Mauna Kea Hui’s Motion to Reopen Hearing to Hear Motion to

Confirm Non-Compliance with Condition No. 4, or, Alternatively, Petition for Declaratory Orders Concerning the Same (“Motion”).

On October 20, 2021, the Board of Land and Natural Resources issued Minute Order No. 1 in this matter, granting Petitioners MAUNA KEA ANAINA HOU, KEALOHA PISCIOTTA, CLARENCE KUKAUAKAHI CHING, DEBORAH J. WARD, PAUL NEVES, and KAHEA: THE HAWAIIAN-ENVIRONMENTAL ALLIANCE’s (collectively, “Petitioners”) request to open a new proceeding for a declaratory ruling for the limited purpose of determining whether Permittee UNIVERSITY OF HAWAI‘I AT HILO (“UHH”) has complied with Condition No. 4 of Conservation District Use Permit HA-3568. The Board served Minute Order No. 1 via email on the parties named in the Certificate of Service attached to Petitioners’ Motion, filed May 24, 2021. Minute Order No. 1 invited the parties named in the Certificate of Service to file a briefing in response to the Petitioners’ Motion within fifteen (15) days of service of the Minute Order, and provided Petitioners ten (10) days after service of any responsive briefings to file a reply.

On November 8, 2021, E. KALANI FLORES (“Flores”), as an individual and on behalf of the FLORES-CASE ‘OHANA, filed a document entitled “State of Hawai‘i Board of Land and Natural Resources Failure to Properly Serve Minute Order No. 1 to the Flores-Case ‘Ohana” (“Flores Request”). The Flores Request asserted that Flores and the Flores-Case ‘Ohana were parties in Contested Case No. BLNR-CC-16-002 pertaining to the Thirty Meter Telescope (“TMT”) project and requested leave to file a responsive brief and a reply brief in this instant declaratory action.

On November 19, 2021, the BLNR issued Minute Order No. 2, granting Flores/FCO leave to file a responsive brief to the Petitioners’ Motion within fifteen (15) days of service of Minute Order No. 2.

II. FLORES/FCO’S SUPPORTING POSITIONS

The Flores/FCO’s positions on this matter substantively support and concur with the Mauna Kea Hui’s positions: (1) DLNR incorrectly approved UHH’s claims to have initiated work on the land or TMT construction; (2) the DLNR chairperson’s summary approval of UHH’s request prejudiced the due process rights of the Mauna Kea Hui because the reasons UHH cannot comply with Condition No. 4 require full examination by the Board, at which time the Board should reconsider its initial grant of the permit in 2017; (3) UHH’s letter to OCCL constituted an

improper request for a determination of conditions exercised under an unlawful rule; and, (4) UHH failed to provide supportive documentation for its claim to have initiated work on the land or construction of the TMT.

The Flores/FCO provides the following arguments and facts in support of the Mauna Kea Hui's Motion.

A. DLNR incorrectly approved initiation of construction work for the TMT project as UHH wasn't in compliance with all preconstruction conditions and mitigation measures of HA-3568 CDUP.

The Flores/FCO argue further that in order for DLNR to correctly approve UHH's claims to have initiated work on the land or construction of the TMT, UHH must have met all preconstruction conditions and mitigation measures of HA-3568 CDUP ("CDUP") before it could have commenced with any work or construction on the land as stipulated in General Condition No. 4.¹ In the same manner that DLNR incorrectly approved UHH's claims to have met this condition, DLNR also erred by failing to ensure UHH was in compliance with all preconstruction conditions and mitigation measures of the CDUP prior to issuing the *Notice To Proceed: Conservation District Use Permit (CDUP) HA-3568 Thirty Meter Telescope (TMT); Mauna Kea Science Reserve, Ka'ohē Mauka, Hāmakua District, Hawai'i TMK (3) 4-4-015:009* ("Notice to Proceed"), dated June 19, 2019, to UHH. Exh. A. Based upon this Notice to Proceed, it is very apparent that DLNR relied solely upon the *Request for Notice to Proceed with Construction, CDUP HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohē Mauka, Hamakua, Hawai'i TMK (3) 4-4-015:009* ("Request"), dated April 8, 2019, sent by UHH Interim Chancellor to Office of Conservation and Coastal Lands ("OCCL") Administrator to assert that preconstruction conditions and requirements were fulfilled in order to meet Special Condition No. 32.² Exh. B. This special condition is directly connected to and is

¹ General Condition No. 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.

² Special Condition No. 32: No construction work shall be initiated until the Applicant demonstrates compliance with all preconstruction conditions and mitigation measures

a prerequisite to General Condition No. 4 as it references the “**construction work**” to be “**initiated**” after UHH “demonstrates compliance with all preconstruction conditions and mitigation measures specifically required in this decision.” However, UHH failed to properly demonstrate that it met all preconstruction conditions and mitigation measures in order to fulfill General Condition No. 4.

In addition, DLNR failed, due to the lack of proper oversight, to verify that UHH was in compliance with all CDUP General Conditions including, but not limited to Nos. 1 and 3, prior to issuing this Notice:

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.;
3. UH Hilo shall comply with all applicable Department of Health administrative rules;

Likewise, DLNR failed, due to the lack of proper oversight, to verify that UHH was in compliance with all CDUP Special Conditions including, but not limited to No. 32.

In the same manner that UHH failed to provide supportive documentation for its claim to have initiated construction work on the land, UHH also failed to provide complete documentation for its claim that it met all CDUP preconstruction conditions and requirements.

Any type of construction activities that were asserted to have occurred on or after June 12, 2019 would have been in violation of HA-3568 CDUP preconstruction conditions as UHH or the TMT International Observatory LLC (“TIO”) did not have a valid National Pollutant Discharge Elimination System (“NPDES”) permit which had expired June 11, 2019. Said original permit, NPDES Permit No. HI S000431, was issued by the State of Hawai‘i Department of Health (“DOH”) to permittee TMT Observatory Corporation effective June 12, 2014. Furthermore, the DOH issued a notice on May 23, 2019 for a public hearing that was held on June 25, 2019 for the renewal application of this NPDES permit. The appropriate course of action for DLNR at this time would have been to wait until DOH’s public hearing and/or contested case hearing was held to determine if any issues of concern might be brought up prior to issuing the Notice to Proceed. Commencing any type of construction work without a valid NPDES permit would also have been a violation of both state and federal laws.

specifically required in this decision. Once this condition has been satisfied, the Department will issue notice to proceed with construction;

A renewal application for this NPDES permit was improperly submitted to the DOH and as such was invalid at the time UHH and TIO asserted that construction work was initiated.

These are the facts pertaining to this permit:

1. NPDES Permit No. HI S000431 ("original permit") was issued June 11, 2014 to the **TMT Observatory Corporation**, not to the TMT International Observatory LLC (TIO). Exh. C.
2. This NPDES permit expired on June 11, 2019.
2. TMT Observatory Corporation did not transfer this NPDES permit to TIO by executing a request for either a transfer of ownership or minor modification in accordance with state and federal laws prior to this permit expiring.
3. Instead, TIO proceeded ahead to renew NPDES Permit No. HI S000431 without satisfying the statutory and regulatory requirements for a Renewal Individual NPDES application as evidenced in the *Transmittal Requirements and Certification Statement for E-Permitting Individual NPDES Application Submissions*, dated November 16, 2018. Exh. D.
4. Due to the original permit having expired and the failure to complete a transfer of ownership or minor modification, TIO was required to submit a **new** NPDES application.
5. DOH issued a notice on May 23, 2019 of a public hearing regarding NPDES Permit No. HI S000431 that was held on June 25, 2019. Due to the DOH having technical issues in receiving public comment through email, the comment period was extended to July 9, 2019.
6. DOH finally provided a response to public hearing comments six months later on January 9, 2020 (Doc. 01011PCTM.20).
7. DOH later issued a notice to TIO, *Rescinding National Pollutant Discharge Elimination System (NPDES) Revised Draft Permit for TMT International Observatory Mauna Kea, Island of Hawaii, Hawaii Permit No. HI S000431*, dated March 3, 2021. Exh. E.
8. A contested case hearing was scheduled to begin February 2021, but was cancelled after the notice regarding rescinding the NPDES permit was issued.
9. DOH re-published its notice regarding this NPDES permit on April 8, 2021.

It is very evident that the TMT Observatory Corporation and TIO are two separate legal entities as was affirmed in the BLNR's *Findings of Fact, Conclusions of Law and Decision and Order* (Case No. BLNR-CC-16-002) as noted in the finding of facts Nos. 224 and 225.

It was further noted that TIO assumed ownership and control of the TMT project, including its assets and liabilities, through the *Asset and Employee Transfer Agreement* ("Transfer Agreement"), dated October 1, 2016, between TMT Observatory Corporation and TIO. Exh. F. However, TMT Observatory Corporation failed to transfer its interest and ownership to the NPDES permit as it was clearly omitted from Schedule 1.1 of this Transfer Agreement. TIO then attempted to transfer this expired NPDES permit through an after-the-fact *Bill of Sale and Assignment Agreement*, dated September 30, 2020, between TMT Observatory Corporation and TIO. Exh. G. This action further affirmed that TIO was not in possession of the required NPDES at the time UHH asserted that construction work was initiated. It is also undisputed that the original NPDES Permit No. HI S000431 holder, TMT Observatory Corporation, failed to execute either a transfer of ownership or minor modification designating TIO as the new permittee prior to DLNR issuing its Notice to proceed with construction work.

Conclusively, UHH could not have been able to legally commence with any work or construction on the land in order to meet Condition No. 4 if it didn't meet all preconstruction conditions and mitigation measures of the CDUP as stipulated in Special Condition No. 32. In addition, UHH failed to demonstrate and provide supportive documentation for its claim that it met all preconstruction conditions and mitigation measures of the CDUP as well as Condition No. 4. Likewise, DLNR failed to verify UHH's claims that it met all preconstruction conditions and mitigation measures of the CDUP as well as Condition No. 4.

This is an ongoing pattern dating back several decades of DLNR failing its statutory duty and responsibility to ensure that the University of Hawai'i as the lessee of the Mauna Kea lands within a conservation district are in compliance with its permits. This matter was previously identified by the Office of the Auditor as stated in the *Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve* (Report No. 98-6, February 1998) that it "found that permit conditions, requirements, and regulations were not always enforced" by DLNR.

It was also stated in the Summary of the *Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve* (Report No. 05-13, December 2005) that DLNR "has not provided a mechanism to ensure compliance with lease and permit requirements in protecting

and preserving Mauna Kea’s natural resources. Although the department is mandated to protect resources, it has not regularly monitored the university for compliance with conservation district use permit requirements.” As a result of this lack of oversight by DLNR, the cumulative impacts upon Mauna Kea’s natural, cultural, and historic resources have been adverse, substantial, and significant.

This same *Follow-up Audit* (2005) also stated that “ The university also does not appear to systematically monitor its tenant observatories for compliance with conservation district use permit requirements and was recently fined \$20,000 for violations in May 2004.”

B. UHH failed to provide supportive documentation and instead asserted inaccurate and false statements for its claim to have initiated construction work.

It’s very apparent that the UHH’s *Notice of Initiation of Work and/or Construction for the Thirty Meter Telescope Project, CDUP-A-3568, General Condition No. 4* (“Notice of Initiation”), dated April 28, 2021, submitted to OCCL Administrator was filled with unsubstantiated, inaccurate, and false statements relevant to this matter that wasn’t properly checked and verified by DLNR. Petitioner’s Exh. 03.

It’s clearly discernible that this Notice of Initiation was based in part on UHH’s *Request for Extension of Time for General Condition No. 4 of Conservation District Use Permit (COUP) HA-3568 (Thirty Meter Telescope) at the Mauna Kea Science Reserve, Ka’ohe Mauka, Hamakua, Hawai’i; TMK (3) 4-4-015:009* (“Request for Extension”), dated June 30, 2019, sent by UHH Chancellor to BLNR Chairperson. Petitioner’s Exh. 01.

Based upon the extremely brief timeline of approval by DLNR of UHH’s Request for Extension, it’s very evident that DLNR failed to properly check and verify the statements in this request when it was approved on the same day, July 30, 2019, it was received as noted in BLNR Chairperson’s *Extension of Processing Deadlines: Conservation District Use Permit (CDUP) HA-3568 Thirty Meter Telescope (TMT); Mauna Kea Science Reserve, Ka’ohe Mauka, Hāmakua, Hawai’i; Tax Map Key (TMK) parcel (3) 4-4-015:009* (“Extension of Processing Deadlines”), dated July 30, 2019, sent to the UHH Chancellor. Petitioner’s Exh. 02. Likewise, it’s very evident that UHH failed to properly check and verify the statements in their request that was drafted based upon the email sent only a day before by TIO’s attorney firm, Watanabe Ing

LLP, to the Vice President for Legal Affairs, University General Counsel, dated July 29, 2019. Petitioner's Exh. 01. Below is an excerpt from this email;

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.

UHH's Notice of Initiation was filled with unsubstantiated, inaccurate, and false statements that wasn't properly checked and verified by DLNR.

Firstly, the deadline to initiate construction set forth in Condition No. 4 was extended to **September 26, 2019** as noted in BLNR Chairperson's Extension of Processing Deadlines - not September 28, 2019 as noted in UHH's Notice of Initiation. This is the initial example of several inaccurate and false statements contained in this notice.

The assertion that the removal of *ahu* on **June 20, 2019** from the northern plateau of Mauna a Wākea at or near the proposed TMT project site is being considered a form of initiating construction work is absolutely false for the following reasons; 1) the removal of *ahu* and any associated *ho'okupu* on this date was actually led and executed by multiple law enforcement agencies including the Division of Conservation and Resources Enforcement ("DOCARE") law enforcement officers of DLNR, not by UHH or TIO representatives; 2) News reports and DLNR's own records would demonstrate their their personnel were directly involved with the physical removal and disposal of the *ahu* and any associated *ho'okupu* on this date and these items were then transported to the DOCARE facility in Hilo;³ Exh. H. and 3) UHH and TIO haven't provided any evidence or witnesses to substantiate their assertion.

The other assertions that the meetings and/or surveys held on **June 25, July 8 and 12, 2019** should be considered a form of initiating construction work is absolutely false for the following reasons; 1) These types of meetings are identified as "pre-construction conferences" in the TMT Project Management Plan that was included as part of the CDUP; 2) Surveys, such as land, biological, and archaeological surveys, are typically done prior to any construction work

³ *News conference: TMT receives notice to proceed from the state.* Video of news conference can be found at: <https://www.youtube.com/watch?v=0AJ9xEMsZRs>

and are also considered pre-construction activities; and 3) If these activities are being considered as construction work, then an independent on-site construction monitor would have been required to be present at all times construction activity is underway at the TMT site. Likewise, archaeological and cultural monitors are required to be present during all ground-disturbing activities. The requirement for monitors is stipulated in the TMT Project Management Plan and Comprehensive Management Plan. Such monitors weren't listed as being present on those dates. If these meetings and surveys are being considered "construction work", then these activities would constitute violations of General Condition No. 8.⁴ If so, then BLNR should be holding UHH accountable for these violations of the CDUP, not unlawfully affirming an initiation of construction work.

The Big Island Invasive Species Committee's inspection of TIO's construction equipment and vehicles on **July 15, 2019** is another false assertion in UHH's Notice of Initiation as this type of activity is considered a preconstruction requirement as stipulated in the TMT Project Management Plan and this activity didn't even occur on Mauna Kea.

UHH's other absurd assertion is that mobilizing construction vehicles and equipment on **July 16, 2019** equates to construction work. This would set a new undesirable precedent for future CDUPs for such general conditions. If a future CDUP permittee attempted to mobilize construction equipment, but failed to do so before a deadline, such a condition would be considered met. Case in point, if a project developer or CDUP permittee attempted to mobilize construction equipment to a project site, but such transport was halted due to an accident, vehicle breakdown, natural disaster, or other circumstances that prevented from actually initiating construction work, such an attempt could be claimed as meeting this permit condition. Instead of making such a false claim, the permittee has the recourse to request a first extension from the BLNR Chair. If an extension is granted, but circumstances still prevent initiation of construction work to meet this particular permit condition, the permittee has an additional recourse to request a second extension from the BLNR pursuant to HAR §13-5-43.⁵]

⁴ General Condition No. 8: The TMT Project will comply with any terms and conditions outlined in the Comprehensive Management Plan and associated sub-plans.

⁵ 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 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. (c) Time extensions may be granted by the

The extent of unsubstantiated, inaccurate, and false statements noted in UHH's Notice of Initiation demonstrate a lack of integrity and a failure to provide acceptable oversight by UHH of the TMT project and associated activities.

It's very obvious that General Condition No. 4 pertains to construction work on the proposed site which is very distinct from preconstruction activities.⁶ Otherwise, this type of general condition would be considered irrelevant for CDUPs if preconstruction activities are now being considered as an initiation of construction.

Furthermore, the two year-extension of the permit, granted by the BLNR Chairperson, clearly stipulated "a new initiation deadline of September 26, 2021." It's undisputed that UHH failed to request a second extension prior to this deadline. Neither did the BLNR grant a second extension pursuant to HAR §13-5-43 (c)(d). It's uncertain as to why UHH didn't request a second extension in a timely manner since it submitted a request for the first extension. It appears that UHH, TIO, and/or their consultants/attorneys were trying to avoid public input and scrutiny if this second request for extension was brought before the BLNR for consideration.

C. DLNR's summary and unlawful approval of "initiated" construction prejudiced due process rights to enforcement of permit conditions.

Flores/FCO also contend that BLNR chairperson's summary approval of UHH's Notice of Initiation prejudiced the due process rights of the Mauna Kea Hui as well as Flores/FCO and other parties to contested case hearing (No. BLNR-CC-16-002), for the similar reasons noted in the Petitioners' Motion.

board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant. (d) Unless otherwise authorized, all time extensions shall be submitted to the department prior to the expiration deadline. (e) If a time extension request is received after the expiration deadline, it shall be forwarded to the board for review. If a request for a time extension is not received within one year after the expiration deadline, the permit shall be void.

⁶ General Condition No. 4 is stipulated as a standard condition of any land use permitted within the conservation district pursuant to HAR §13-5-42 (a)(8).

III. CONCLUSION

Based on all of the reasons presented herein and any reasons appearing of record, Flores/CFO supports the Petitioners' request that the BLNR reopen its contested case hearings for the limited purpose of hearing and deciding this motion to confirm UHH's noncompliance with Condition No. 4, or in the alternative, entering declaratory orders confirming the same. Flores/CFO also contend that UHH was not in compliance with other conditions of CDUP HA-3568 and that BLNR/DLNR failed in their statutory duties and obligations to ensure compliance with these permit conditions and requirements in protecting and preserving Mauna a Wākea's natural and cultural resources within a conservation district. Likewise, UHH has also demonstrated that it doesn't have the capacity and expertise to properly manage astronomy development such as the TMT project to ensure that TIO, project owner, is in compliance with its permit conditions and requirements. As such, members of the public should have a means and method for notifying the BLNR/DLNR when there are noncompliance issues associated with BLNR issued permits.

DATED: Pu'ukapu, Hawai'i, December 3, 2021

/s/ E. Kalani Flores

E. KALANI FLORES

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAI‘I

IN THE MATTER OF	)	Case No. HA-22-02
)	
The Petition of Mauna Kea Hui for a	)	DECLARATION OF E. KALANI
Declaratory Order Filed May 24, 2021.	)	FLORES
)	

DECLARATION OF E. KALANI FLORES

I, E. KALANI FLORES, hereby declare as follows:

1. I am a member of the Flores-Case ‘Ohana.
2. The Flores-Case ‘Ohana is an unincorporated association of a Kanaka Maoli (aka Native Hawaiian) family whose members reside on Hawai‘i Island and who engage in Native Hawaiian traditional and customary practices on Maua a Wākea, also referred to as Mauna Kea.
3. I have the authority to represent the Flores-Case ‘Ohana in this matter before the State of Hawai‘i Board of Land and Natural Resources (“BLNR”).
4. I make this declaration in lieu of an affidavit and based on personal knowledge and the records and files of this matter.
5. Attached hereto as Exhibit “A” is a true and correct copy of the *Notice To Proceed: Conservation District Use Permit (CDUP) HA-3568 Thirty Meter Telescope (TMT); Mauna Kea Science Reserve, Ka ‘ohe Mauka, Hāmakua District, Hawai‘i TMK (3) 4-4-015:009*, dated June 19, 2019, sent by BLNR Chairperson, Suzanne D. Case, to UHH Interim Chancellor, Marcia Sakai, obtained from the OCCL online file repository available at:
<https://dlnr.hawaii.gov/occl/tmt/>
6. Attached hereto as Exhibit “B” is a true and correct copy of the *Request for Notice to Proceed with Construction, CDUP HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka ‘ohe Mauka, Hamakua, Hawai‘i TMK (3) 4-4-015:009*, dated April 8, 2019, a copy without all attachments, sent by UHH Interim Chancellor, Marcia Sakai, to OCCL Administrator, Samuel Lemmo, obtained from the OCCL online file repository available at: <https://dlnr.hawaii.gov/occl/tmt/>

7. Attached hereto as Exhibit “C” is a true and correct copy of NPDES Permit No. HI S000431 issued June 11, 2014 to the TMT Observatory Corporation, obtained from the OCCL online file repository available at: <https://dlnr.hawaii.gov/occl/tmt/>

8. Attached hereto as Exhibit “D” is a true and correct copy of the *Transmittal Requirements and Certification Statement for E-Permitting Individual NPDES Application Submissions*, dated November 16, 2018, a copy without all attachments (i.e. NOI Form C, maps), obtained from the DOH Clean Water Branch - Public Notices and Updates webpage at: <https://health.hawaii.gov/cwb/clean-water-branch-home-page/public-notices-and-updates/>

9. Attached hereto as Exhibit “E” is a true and correct copy of the *Rescinding National Pollutant Discharge Elimination System (NPDES) Revised Draft Permit for TMT International Observatory Mauna Kea, Island of Hawaii, Hawaii Permit No. HI S000431*, dated Mach 3, 2021.

10. Attached hereto as Exhibit “F” is a true and correct copy of the *Asset and Employee Transfer Agreement*, dated October 1, 2016, between TMT Observatory Corporation and TIO.

11. Attached hereto as Exhibit “G” is a true and correct copy of the *Bill of Sale and Assignment Agreement*, dated September 30, 2020, between TMT Observatory Corporation and TIO.

12. Attached hereto as Exhibit “H” is a true and correct copy of the Hawaii News Now news report, *Activists pledge more protests as Thirty Meter Telescope construction given green light to proceed*, published: June 21, 2019 at 7:55 AM HST, obtained from the Hawaii News Now webpage at: <https://www.hawaiinewsnow.com/2019/06/20/authorities-dismantle-structures-mauna-kea-set-up-by-tmt-protesters/>

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Pu‘ukapu, Hawai‘i, December 3, 2021

/s/ E. Kalani Flores

E. KALANI FLORES

Observatory, LLC

Harry Fergerstrom
hankhawaiian@yahoo.com

Richard L Deleon
kekaukike@msn.com

Mehana Kihoi
uhiwai@live.com

C. M. Kaho'okahi Kanuha
kahookahi@gmail.com

Joseph Kualii Lindsey
Camara
kualiic@hotmail.com

Cindy Freitas
hanahanai@hawaii.rr.com
Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
The Temple of Lono

Kalikolehua Kanaele
akulele@yahoo.com

Stephanie-Malia Tabbada
s.tabbada@hawaiiantel.net

Tiffnie Kakalia
tiffniekakalia@gmail.com

Glen Kila
makakila@gmail.com
Dwight J. Vicente
dwightjvicente@gmail.com

Brannon Kamahana Kealoha
brannonk@hawaii.edu

William Freitas
pohaku7@yahoo.com

J. Leina'ala Sleightholm
leina.ala.s808@gmail.com

Michael Cain
Michael.cain@hawaii.gov
Custodian of the Records

DATED: Pu'ukapu, Hawai'i, December 3, 2021

/s/ E. Kalani Flores

E. KALANI FLORES

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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

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BOATING AND OCEAN RECREATION
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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

CDUP HA-3568

Marcia Sakai, Interim Chancellor
University of Hawai'i at Hilo
200 West Kāwili Street
Hilo, HI 96720

JUN 19 2019

SUBJECT: NOTICE TO PROCEED: CONSERVATION DISTRICT USE PERMIT (CDUP) HA-3568
Thirty Meter Telescope (TMT)
Mauna Kea Science Reserve, Ka'ohē Mauka, Hāmākua District, Hawai'i
TMK (3) 4-4-015:009

The Department of Land and Natural Resources (DLNR) has received and reviewed the following documents related to Conservation District Use Permit (CDUP) HA-3568 for the Thirty Meter Telescope:

1. Civil Construction Package
2. Best Management Practices for the Civil Construction Package
3. Recreation Parking Plan
4. Mitigation measure matrix for compliance with CDUP HA-3568 general and special conditions

The DLNR approved CDUP HA-3568 for TMT in a Decision and Order in October 2017. The documents were submitted in support of the following two conditions of the permit:

General Condition No. 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.

Special Condition No. 32: Construction can be initiated once the permittee demonstrates compliance with the preconstruction conditions and mitigation measures contained in the Decision. The Department is required to review the construction and grading plans for consistency with the permit. Once the construction and grading plans

CDUP HA-3568
Notice to Proceed

have been signed and the preconstruction conditions have been met the Department will issue a Notice to Proceed to TMT.

The Civil Construction Package was submitted to DLNR on February 3, 2019. The Civil Construction Package prepares the site for construction, and involved batch plant site, the access way, and the TMT site for construction. Staff from the Office of Conservation and Coastal Lands (OCCL) met with the TMT design team to review the construction documents on March 11, 2019. The plans that were submitted are consistent with the Environmental Impact Statement (EIS) and the Conservation District Use Application (CDUA).

The mitigation measures required by the CDUP include actions related to historic resources, archaeological and cultural monitoring, materials waste management and spill prevention, waste minimization, cultural and natural resources training for project employees and contractors, arthropod monitoring, safety and accident prevention, and invasive species prevention and control.

Additional mitigation measures were agreed to in the Final Environmental Impact Statement and the TMT Management Plan. These include actions related to access way paving and design, arthropod monitoring, noise pollution, noise permit and noise variance, independent construction monitors, best management practices documentation, a rock movement plan, decommissioning, site documentation, construction mitigation measures, a cultural and archaeological monitoring plan, an NPDES permit, and an oversize and overweight vehicles permitting plan.

Based upon our review of the information you 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.

If you have any questions, please feel free to contact Michael Cain at the Office of Conservation and Coastal Lands (OCCL) at 808-587-0048.

Sincerely,



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

- c: Stephanie Nagata, Director, OMKM
- Gary Sanders, Project Manager, TMT
- DLNR – Land Division, Division of Forestry and Wildlife, Division of Conservation and Resource Enforcement
- County Planning Department
- Jim Hayes, Planning Solutions Inc.



UNIVERSITY
of HAWAII
HILO

April 8, 2019

Mr. Samuel Lemmo
Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
1151 Punchbowl Street, Room 131
Honolulu, Hawaii 96813

Subject: Request for Notice to Proceed with Construction, CDUP HA-3568 for the
Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka,
Hamakua, Hawai'i TMK (3) 4-4-015:009

Dear Mr. Lemmo:

The University of Hawai'i at Hilo respectfully requests a notice to proceed with the construction of the Thirty Meter Telescope (TMT) project. This notice is a requirement of Special Condition 32 of CDUP HA-3568:

"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 [a] notice to proceed with construction"

The Office of Maunakea Management received a notice from TMT International Observatory LLC (TIO) indicating its intent to start construction. The Office reviewed the conditions of the CDUP and 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. A table containing all the CDUP conditions and compliance actions is attached. The table also indicates whether the CDUP condition is a pre-construction requirement. Also attached is a matrix listing all mitigation measures and management actions required in the documents identified in General Conditions 6, 7, 8 and 9, and the project's fulfillment of the pre-construction measures. Enclosed is a copy of the TMT project's *Best Management Practices for the Civil Construction Package* the overarching policy manual for this phase of construction.

200 W. Kāwili St.
Hilo, Hawai'i 96720-4091
Telephone: (808) 932-7348
Fax: (808) 932-7338
hilo.hawaii.edu

Mr. Samuel Lemmo
April 8, 2019
Page 2

The TIO has not yet determined when it plans to start construction, but intends to commence construction before the expiration of the two-year limit specified in General Condition 4 of the subject CDUP which was issued on September 27, 2017.

We look forward to receiving a notice to proceed. Should you have any questions or require additional information, please contact Stephanie Nagata, Director, Office of Maunakea Management at (808) 933-0734 or by email at nagatas@hawaii.edu.

Sincerely yours,



Marcia Sakai
Interim Chancellor

Attachments

c: Stephanie Nagata, Director, OMKM
Gary Sanders, Project Manager, TMT

**CONDITIONS
TMT CDUP HA-3568**

ITEM	TASKS	PRE- CONSTRUCTION	COMMENTS
GENERAL CONDITIONS			
GC1	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.	X	UH Hilo acknowledges and concurs to the best of its knowledge that it has complied with and will continue to comply with all applicable statutes, ordinances, rules, regulations, and conditions, including HAR Chapter 13-5.
GC2	UH Hilo shall obtain appropriate authorization from the Department for the occupancy of state lands, if applicable.	X	UH was granted General Lease S-4191 for the Mauna Kea Science Reserve in 1968.
GC3	UH Hilo shall comply with all applicable Department of Health administrative rules.	X	UH Hilo acknowledges and concurs. TMT has obtained a National Pollutant Discharge Elimination System (NPDES) permit. TMT has also obtained a Community Noise permit, which is required for normal work hours. Even though TMT does not plan on working outside normal work hours during the civil construction phase, it has obtained a Community Noise Variance.
GC4	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.	X	Any work done or construction shall comply with the 2-year and 12-year requirements in consultation with DLNR. UH Hilo shall notify DLNR in writing when TMT starts construction and when it is completed.
GC5	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.	X	The four copies of the construction drawings and construction specifications were submitted to DLNR on February 4, 2019.
GC6	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.	X	UH Hilo and TMT acknowledges and concurs.
GC7	All mitigation measures and management actions contained in the Historic Preservation Mitigation	X	UH Hilo and TMT acknowledge and concur. These plans were all attachments to the

CONDITIONS
TMT CDUP HA-3568

ITEM	TASKS	PRE- CONSTRUCTION	COMMENTS
	Plan, Construction Plan, Historical & Archaeological Site Plan, Maintenance Plan, and Arthropod Monitoring Plan, are incorporated as conditions of this permit.		CDUA.
GC8	The TMT Project will comply with any terms and conditions outlined in the Comprehensive Management Plan and associated sub-plans.	X	UH Hilo and TMT acknowledge and concur. Terms and conditions of the Comprehensive Management Plan and subplans are incorporated in the TMT Management Plan, which was incorporated into the CDUA.
GC9	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.	X	UH Hilo and TMT acknowledge and concur. The TMT Management Plan was incorporated into the CDUA.
SPECIAL CONDITIONS			
SC1	Ensuring that employees attend mandatory cultural and natural resources training with a minimum of one days' training.		In addition to participation in the annual cultural and natural resources training, employees shall attend a minimum one-day training. TMT employees have been taking the orientation annually since 2013.
SC2	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.		'Imiloa, Maunakea Observatories Support Services and OMKM are working on exhibit designs for the Visitor Information Station (VIS). Additional exhibits that may be used at the TMT facilities and 'Imiloa, and/or updates to the VIS will be also be explored following completion of the VIS exhibits. TMT is committed to working with the respective entities a few years after the start of construction.
SC3	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.		TMT is committed to funding and executing the re-naturalization of the vehicular road to the top of Pu'u Poli'ahu . Upon completion of construction of the TMT project, TMT will fund and execute the partial re-naturalization of the batch plant. Also upon completion of the installation of all electrical

ITEM	TASKS	PRE-CONSTRUCTION	COMMENTS
			upgrades and in consultation with Kahu Kū Mauna, TMT will camouflage the utility pull boxes to reduce visual impacts in the summit area.
SC4	Implementing an invasive species control program.	X	TMT's invasive species control program is included in TMT's Best Management Practices. TMT is also required to comply with OMKM's Invasive Species Management Plan (ISMP). TMT secured the services of the Big Island Invasive Species Committee to assist with inspections required in OMKM's ISMP.
SC5	Working with OMKM to develop and implement a wēkiu bug habitat restoration study.		TMT is committed to working with OMKM on the wēkiu bug habitat restoration study. TMT has consulted with OMKM on the habitat proposal.
SC6	Implementing the "Zero Waste Management" policy.		The design of TMT is based on a zero waste policy. For example, TMT will have a closed wastewater system.
SC7	Filling employment opportunities locally to the greatest extent possible.		All TMT positions are advertised in Hawai'i County. TMT is building its administrative support staff and has recently filled several positions, including one Hawai'i Office Administrator, one Accounts Payable Specialist, one Senior Technical Manager, and one Environmental, Safety & Compliance Officer.
SC8	Mandating that employees traveling beyond Hale Pōhaku take part in a ride-sharing program using project vehicles.		A ride-sharing program is incorporated in the TMT Management Plan and Best Management Practices.
SC9	Using energy savings devices such as solar hot water systems, photovoltaic power systems, energy efficient light fixtures, and Energy Star rated appliances.		Energy efficient light fixtures are part of the TMT design and appliances will also meet this condition.
SC10	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.		UH has committed to decommission three telescopes. The Caltech Submillimeter Observatory is currently undergoing the decommissioning process pursuant to the BLNR approved Decommissioning Plan. UHH removed the telescope from its summit facility and submitted its Notice of Intent to decommission to the Maunakea Management Board.

Exhibit H

ITEM	TASKS	PRE-CONSTRUCTION	COMMENTS
			UH anticipates submitting a notice of intent to decommission UKIRT by the end of 2020 and initiate the physical dismantling 2024.
SC11	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.		UH has committed to decommission, by the end of the current master lease, VLBA and one additional observatory.
SC12	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.		TMT has been making annual contributions to the THINK Fund since 2014. Seventy-five percent of the contributions are made to the Hawai'i Community Foundation and twenty-five percent to Ke Ali'i Pauahi Foundation. The last contribution occurred February 2019. Hawai'i Community Foundation is currently seeking proposals from Hawai'i Island non-profit organizations that work with children of incarcerated parents for the administration of the annual \$5,000.
SC13	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.		TMT has informed Hawai'i Community Foundation that the funds are to be distributed according to this CDUP condition.
SC14	The funding shall be distributed with reasonable promptness and not be used to build a permanent endowment.		TMT acknowledges and concurs.
SC15	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.		Workforce Pipeline Program funding has been ongoing for ten years and will continue. The program is in partnership with UH Hilo, Hawai'i Community College, Department of Education, Department of Business Economic Development and Tourism, and a number of non-profit organizations. High school and college internships and mentorships are being funded for Hawai'i Island students.
SC16	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		UH Hilo acknowledges the completion of the survey and implementation of this condition pursuant to the approved grant of easement is required prior to HELCO's commencement

Exhibit H

ITEM	TASKS	PRE-CONSTRUCTION	COMMENTS
	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.		of work to upgrade the power line.
SC17	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.		OMKM has been working with the Wēkiu Bug Scientific Committee since 2003. This committee, which includes representatives from DLNR and scientists, reviews data, and advises on survey and research efforts related to the Wēkiu Bug, arthropods and invasive species. The U.S. Fish and Wildlife Service serves in an advisory capacity to the committee.
SC18	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.		HELCO has been made aware of these conditions. Should disturbances occur, TMT will, to the fullest extent possible, restore any disturbance made outside the easement area.
SC19	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.	X	Recreational parking is being set aside in the batch plant area. OMKM consulted with Hawai'i Island Natural Area Reserve staff in the development of the plan. The parking plan is included in the construction documents and will be installed during the Phase I construction phase. The parking plan was submitted to DLNR on February 4, 2019.
SC20	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.		TMT acknowledges and concurs. Upon completion of construction, OMKM shall include the TMT site in the twice-annual inspections of observatories for compliance with their permit.
SC21	The Archaeological Monitoring Plan will be submitted to the State Historic Preservation Division for review and approval prior to the onset of construction.	X	TMT's Archaeological Monitoring Plan was approved by SHPD in May 2013.
SC22	Sublease rent will be deposited into the Mauna Kea Lands Management Special Fund, and only used for management of Mauna Kea and related purposes as provided by law.		UH Hilo/OMKM confirms that all TMT sublease payments are deposited into the Mauna Kea Lands Management Special Fund and are used for management of Maunakea.
SC23	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.		UH Hilo/OMKM acknowledges and concurs.
SC24	UH Hilo/OMKM will provide OCCL and BLNR a copy of TIO's annual report to OMKM, as		UH Hilo/OMKM acknowledges and concurs.

**CONDITIONS
TMT CDUP HA-3568**

ITEM	TASKS	PRE-CONSTRUCTION	COMMENTS
	required by Section 5.3 of the TMT Management Plan.		
SC25	UH Hilo will allow BLNR to name a DLNR representative to participate in the CMP five-year management review process.		On January 25, 2019, the Board of Land and Natural Resources delegated the responsibility to appoint a DLNR representative to the Chair.
SC26	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.		UH Hilo requires TMT to submit copies of approvals from the Department of Health and Hawai'i County Department of Water Supply.
SC27	UH Hilo understands and agrees that this permit does not convey any vested rights or exclusive privilege.	X	UH Hilo acknowledges and concurs.
SC28	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.		UH Hilo acknowledges and concurs.
SC29	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.		UH Hilo acknowledges and concurs. UH Hilo shall work with TMT to take required measures should any of these occur.
SC30	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.		TMT shall follow the protocols described in the Archaeological Monitoring and Historic Preservation Mitigation plans. If inadvertent burials are encountered, TMT shall follow the protocols in OMKM's Burial Treatment Plan that was approved by the State Historic Preservation Division.
SC31	During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities.		OMKM rangers regularly patrol and monitor construction activities. They will address activities described in this condition.
SC32	No construction work shall be initiated until the Applicant demonstrates compliance with all	X	UH Hilo/OMKM acknowledges and concurs. Pre-construction CDUP permit conditions

ITEM	TASKS	PRE-CONSTRUCTION	COMMENTS
	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.		have been addressed and are summarized herein.
SC33	TIO shall set aside funds annually in a sufficient amount to allow for site observatory and access way site restoration.		Pursuant to its sublease agreement with UH, TMT developed a Decommissioning Funding Plan which calls for the establishment of a sinking fund that will cover the cost of decommissioning. At the start of operations, TMT shall set aside \$1 million annually for the 50-year life of the project.
SC34	Daytime activities at TMT will be minimized on up to four days per year, as identified by Kahu Kū Mauna.		Upon consultation with Kahu Kū Mauna the four days when TMT activity is minimized are the Winter and Summer solstices and Vernal and Autumnal equinoxes.
SC35	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.		While Kahu Kū Mauna acknowledges that the public lands on Maunakea are accessible to native Hawaiian cultural practitioners, they have begun deliberating on a set-aside area to be used specifically by native Hawaiian practitioners for the exercise of traditional and customary practices.
SC36	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 .		UH Hilo acknowledges and concurs. See SC35.
SC37	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.		The Visitor Information Station (VIS) sells locally made handicrafts with native Hawaiian cultural theme and continues to expand its offerings.
SC38	UHH shall implement a cooperative internship and mentorship program between personnel working at the astronomy facilities on Mauna Kea and Hawaiian communities.		Maunakea Scholars is an educational program engaging local high school students who work with mentors (primarily graduate students at UH's Institute for Astronomy) in developing astronomy research proposals.

Exhibit H

ITEM	TASKS	PRE-CONSTRUCTION	COMMENTS
			<p>The students compete among themselves for time on the world's most powerful telescopes. This program is jointly sponsored by the Hawai'i Department of Education, Maunakea Observatories and University of Hawai'i. The program has reached over 400 high school students from all the major Hawaiian islands.</p> <p>Maunakea Observatories participate in the Akamai Workforce Initiative, which provides college students with summer internships at observatories and high- tech companies in Hawai'i. The program fosters advanced education for Hawai'i students (80 percent graduated from a Hawai'i high school or were born in Hawai'i), and increased participation of underrepresented and underserved populations in STEM.</p>
SC39	<p>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:</p> <ul style="list-style-type: none"> (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. <p>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.</p>		<p>UHH/OMKM and Maunakea observatories offer a number of initiatives described in this condition. Maunakea Scholars and Akamai program described in SC38 are two such examples.</p> <p>UHH has supported the development of navigation curriculum in use by Keaukaha One Youth Development and Ka Haka 'Ula Ke'elikōlani offers early immersion education at Ke Kula 'O Nāwahīokalani'ōpu'u and develops/distributes curriculum through Hale Kuamo'o</p> <p>'Imiloa brings together members of the Hawaiian and astronomy communities to share a common vision for the future, bringing information about the cultural and natural history of Maunakea to students, teachers, our local residents, and visitors from around the world. 'Imiloa links to early Polynesian navigation history and knowledge of the night skies, and today's renaissance of Hawaiian culture and wayfinding with parallel growth of astronomy and scientific developments on Hawai'i Island. 'Imiloa has piloted a grant-funded navigation program since 2008 and is currently seeking to</p>

Exhibit H
Hores Case Ohana Memorandum

ITEM	TASKS	PRE-CONSTRUCTION	COMMENTS
			<p>institutionalize this program.</p> <p>OMKM has for the past 15+ years been engaged in environmental studies including biological and physical research and survey. These programs are collaborations with UHH and Mānoa faculty, undergraduate and graduate students. Beginning in 2012 OMKM participates annually in the Pacific Internship Program for Exploring Science (PIPES) program by hiring two – three summer interns. This program is committed to increasing the recruitment and retention of local students, especially those of native Hawaiian ancestry, into fields of study, and ultimately careers, related to the natural resources of Hawai‘i and The Pacific Region.</p>
SC40	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.		Halepōhaku is available for use for educational purposes, including meetings, workshops, and retreats.
SC41	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.		Kahu Kū Mauna developed a policy on the construction of new cultural features. This policy was approved by the Maunakea Management Board in May 2018.
SC42	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.		UH Hilo/OMKM acknowledges and concurs.
SC43	Other terms and conditions as may be prescribed by the Chairperson.		UH Hilo/OMKM acknowledges and concurs.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to
EMD/CWB

06007PCTM.14

June 12, 2014

Mr. Gary Sanders
Project Manager
TMT Observatory Corporation
1200 E. California Boulevard, Mail Code 102-8
Pasadena, California 91125

Dear Mr. Sanders:

In accordance with the provisions of the Clean Water Act, Hawaii Revised Statutes, Chapter 342D; and Hawaii Administrative Rules, Chapters 11-54 and 11-55, the Department of Health (DOH), Clean Water Branch (CWB) has reviewed the following application for a National Pollutant Discharge Elimination System (NPDES) permit to discharge storm water run-off associated with construction activity:

<u>Facility</u>	<u>Permit No.</u>
Thirty Meter Telescope Observatory Mauna Kea, Island of Hawaii, Hawaii	HI S000431

The public notice of our proposed action was published in the *Honolulu Star-Advertiser* on **Thursday, May 1, 2014**, regarding the above application.

After consideration of the expressed views of all interested persons and agencies, pertinent Federal and State statutes and rules regarding the discharge, the DOH hereby issues the enclosed NPDES permit for the discharge referred to above. This action does not constitute a significant change from the tentative determination set forth in the public notice.

This permit will take effect on **June 12, 2014**.

Please complete the DOH Customer Satisfaction Survey regarding your experience in applying for this permit. This brief survey is available on the e-Permitting Portal located at: <https://eha-cloud.doh.hawaii.gov/epermit/View/home.aspx>. Please use the Application Finder button and search for the "Customer Satisfaction Survey."

Mr. Gary Sanders
June 12, 2014
Page 2

06007PCTM.14

Should you have any questions, please contact the Enforcement Section or Mr. Colin Maruoka of the Engineering Section, CWB, at (808) 586-4309.

Sincerely,



STUART YAMADA, P.E., CHIEF
Environmental Management Division

CTM:tg

Enclosure: NPDES Permit

- c: Water Division (WTR-5), CWA Standards and Permits Office, EPA, Region 9
(w/encls.) [via e-mail sablad.elizabeth@epamail.epa.gov only]
- Ms. Jan Reichelderfer, PB Americas Inc.
(w/encls.) [via e-mail reichelderfer@pbworld.com only]
- Mr. Paul Gillett, TMT Observatory Corporation
(w/encls.) [via e-mail pgillett@tmt.org only]
- Mr. Jim Hayes, PB Americas Inc.
(w/encls.) [via e-mail hayesj@pbworld.com only]

PERMIT NO. HI S000431

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. §1251 et seq.; the "Act"); Hawaii Revised Statutes, Chapter 342D; and Hawaii Administrative Rules (HAR), Chapters 11-54 and 11-55, Department of Health (DOH), State of Hawaii;

TMT OBSERVATORY CORPORATION

(hereinafter PERMITTEE),

is authorized to discharge storm water associated with construction activities from the Thirty Meter Telescope (TMT) Observatory project site located at 13-North Site in Area E of the Astronomy Precinct, Mauna Kea Science Reserve and Hale Pohaku on Mauna Kea, Mauna Kea, Island of Hawaii, Hawaii, TMKs: (3) 4-004-015:009 and (3) 4-004-015:012 to the receiving State waters identified in the table below:

Discharge Point No.	Receiving State Water	Classification	Latitude (N)	Longitude (W)
1	Kemole Gulch	Class 2, Inland	19.845833°	155.500278°
2	Kuupahaa Gulch	Class 2, Inland	19.860556°	155.497500°
3	Puupohakuloa Gulch	Class 2, Inland	19.810000°	155.509444°
4	Pohakuloa Gulch	Class 2, Inland	19.787500°	155.496944°
5	Wailuku River	Class 2, Inland	19.711944°	155.307500°

in accordance with the general requirements, discharge monitoring requirements and other conditions set forth herein, and in the attached DOH "Standard NPDES Permit Conditions," that is available on the DOH, Clean Water Branch (CWB) website at <http://health.hawaii.gov/cwb/site-map/home/standard-npdes-permit-conditions/>.

All references to Title 40 of the Code of Federal Regulations (CFR) are to regulations that are in effect on July 1, 2013, except as otherwise specified. Unless otherwise specified herein, all terms are defined as provided in the applicable regulations in Title 40 of the CFR.

This permit will become effective on **June 12, 2014**.

This permit and the authorization to discharge will expire at midnight, **June 11, 2019**.

Signed this 12th day of June, 2014.



(For) Director of Health

**PERMIT NO. HI S000431
Page 2**

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**ATTACHMENT:
STANDARD NPDES PERMIT CONDITIONS (VERSION 14)**

PART A
PERMIT NO. HI S000431
Page 3

A. GENERAL REQUIREMENTS

The Permittee shall:

1. Comply with all materials submitted in and with the application, dated March 31, 2014.
2. Retain a copy of the application, including other related materials, and this permit at the job site or at a nearby field office.
3. Design, operate, implement, and maintain the project Site-Specific Best Management Practices (BMPs) Plan to ensure that storm water discharges associated with construction activities will not cause or contribute to a violation of applicable State water quality standards.
4. Implement the project Site-Specific BMPs Plan as often as needed to improve the quality of storm water discharges or when instructed by the Director of Health (Director).
5. Not cause or contribute to a violation of the basic water quality criteria as specified in HAR, Chapter 11-54, Section 11-54-4.
6. Inspect, at a minimum of once per week, the receiving state waters, storm water runoff and control measures and BMPs to detect violations of and conditions which may cause or contribute to a violation of the basic water quality criteria as specified in HAR, Chapter 11-54, Section 11-54-4 (e.g., the Permittee shall look at storm water discharges and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life).
7. Immediately stop, reduce, or modify construction, or implement new or revised BMPs as needed to stop or prevent a violation of the basic water quality criteria as specified in HAR, Chapter 11-54, Section 11-54-4.
8. Review the effectiveness and adequacy of the implemented Site-Specific BMPs Plan(s) and Erosion and Sediment Control (ESC) Plan(s) at a minimum of once per week, and update the plan as often as necessary. Any changes(s) to the Site-Specific BMPs Plans and/or ESC Plans or correction(s) to information already on file with the CWB shall be maintained onsite and be available upon request.

PART A
PERMIT NO. HI S000431
Page 4

9. Know that Mr. Paul Gillett of TMT Observatory Corporation is recognized as the duly authorized representative to submit all information/documents for compliance with the NPDES conditions. A new authorized representative may be appointed in accordance with Part B.8.

PART B
PERMIT NO. HI S000431
Page 5

B. REPORTING REQUIREMENTS

The Permittee shall:

1. Submit the following information in accordance with Part B.8. of this permit to the CWB for review and comment **at least 30 calendar days before the start of construction activities.**

All questions/concerns that the DOH may have must be answered to the satisfaction of the CWB.

- a. The County-approved ESC Plan and/or Grading Permit.
 - b. Operator or General Contractor information
2. BMPs used for land disturbance activities shall be located upland and treat all upland pollutants prior to any discharge. These BMPs shall be designed and implemented to ensure all upland pollutants are prevented from discharging to State waters. BMPs for in-water work shall be designed and implemented to ensure compliance with all applicable WQS.
 3. Notify the Director of the construction start date in accordance with Part B.8. within seven (7) calendar days before the start of construction activities.
 4. Complete and submit the Solid Waste Disclosure Form for Construction Sites to the DOH, Solid and Hazardous Waste Branch, Solid Waste Section as specified on the form at least 30 calendar days before the start of construction activities. The form can be downloaded at:
<http://health.hawaii.gov/shwb/files/2013/06/swdiscformnov2008.pdf>.
 5. Submit any changes to information on the CWB Individual NPDES Form in accordance with Part B.8. as soon as changes arise. The Permittee shall properly address all related concerns and/or comments to the CWB's satisfaction.
 6. Immediately notify the Director of all incidences of noncompliance and identify the pollutant(s) source(s) and the proposed and implemented control or mitigative measures as required in Section 16 of the "Standard NPDES Permit Conditions".
 7. Complete and submit the Notice of Cessation in accordance with Part B.8. within 14 calendar days of completion of the subject project.

PART B
PERMIT NO. HI S000431
Page 6

8. All reports, notifications, and updates to information on file shall be submitted through the CWB Compliance Submittal Form for Individual NPDES Permits and Notice of General Permit Coverages (NGPCs). This form is accessible through the e-Permitting Portal website at: <https://eha-cloud.doh.hawaii.gov/epermit/View/home.aspx>. If not already registered, you will be asked to do a one-time registration to obtain your login and password. After you register, click on the Application Finder tool to locate the form. Follow the instructions to complete and submit this form. All submissions shall include a CD or DVD containing the downloaded e-Permitting submission and a completed Transmittal Requirements and Certification Statement for e-Permitting NPDES/NGPC Compliance Submissions Form, with original signature and date.
9. Include the following certification statement, NPDES permit number, and original signature on each submittal in accordance with HAR, Chapter 11-55, Section 11-55-07(b). Failure to provide this information on future correspondence or submittals may be a basis for delay of the processing of the document(s).

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."
10. The Permittee shall develop and submit a facility-specific waste load allocation (WLA) implementation and monitoring plan to the Director when a Total Maximum Daily Load, which specifies WLAs applicable to the Permittee's discharge, is approved by the EPA within one (1) year of notification of the approval date.

PART C
PERMIT NO. HI S000431
Page 7

C. BEST MANAGEMENT PRACTICES (BMPs)

1. The Permittee shall:
 - a. Refrain from performing any work during heavy rainstorms.
 - b. Prevent loose particles, sand, soil, silt, and other construction debris at the project site from being washed away by storm water runoff to drainage systems and to State waters.
 - c. Remove the excavated material as soon as possible or at the end of each work day. The excavated material shall be disposed in a State and/or County-approved landfill site.
 - d. Not discharge water used for dust control to State waters.
 - e. Not discharge water used for irrigation to State waters.
 - f. Not discharge hydrotesting effluent to State waters without an appropriate NPDES permit.
 - g. Not discharge dewatering effluent to State waters without an appropriate NPDES permit.
 - h. Not stockpile unprotected materials on-site without implementing the appropriate BMPs for the stockpile(s).
 - i. Wash-down vehicles and/or equipment and concrete truck drums only at designated areas and not discharge the wash waters to State waters. The concrete wash water shall not be allowed to infiltrate into the ground.
 - j. Assure that the implemented BMPs are effective and the discharge effluent is in compliance with the basic State water quality standards.
2. The following special conditions apply to all land disturbance work conducted under this permit:
 - a. Construction Management Techniques
 - (1) Clearing and grubbing shall be held to the minimum necessary for grading and equipment operation.

PART C
PERMIT NO. HI S000431
Page 8

- (2) Construction shall be sequenced to minimize the exposure time of the cleared surface area.
 - (3) Construction shall be staged or phased for large projects. Areas of one (1) phase shall be stabilized before another phase is initiated. Stabilization shall be accomplished by temporarily or permanently protecting the disturbed soil surface from rainfall impacts and runoff.
 - (4) Erosion and Sediment Control Measures shall be in place and functional before earth moving operations begin. These measures shall be properly constructed and maintained throughout the construction period.
 - (5) All control measures shall be checked and repaired as necessary, for example, weekly in dry periods and within 24 hours after any rainfall of 0.5 inches or greater within a 24-hour period. During prolonged rainfall, daily checking is necessary. The Permittee shall maintain records of checks and repairs.
 - (6) The Permittee shall maintain records of the duration and estimated volume of storm water discharge(s).
 - (7) A specific individual shall be designated to be responsible for erosion and sediment controls on each project site.
- b. **Vegetation Controls**
- (1) Pre-construction vegetative ground cover shall not be destroyed, removed, or disturbed more than 20 calendar days prior to land disturbance.
 - (2) Temporary soil stabilization with appropriate vegetation shall be applied on areas that will remain unfinished for more than 30 calendar days.
 - (3) Permanent soil stabilization with perennial vegetation or pavement shall be applied as soon as practical after final grading. Irrigation and maintenance of the perennial vegetation shall be provided for 30 calendar days or until the vegetation takes root, whichever is shorter.

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Page 9

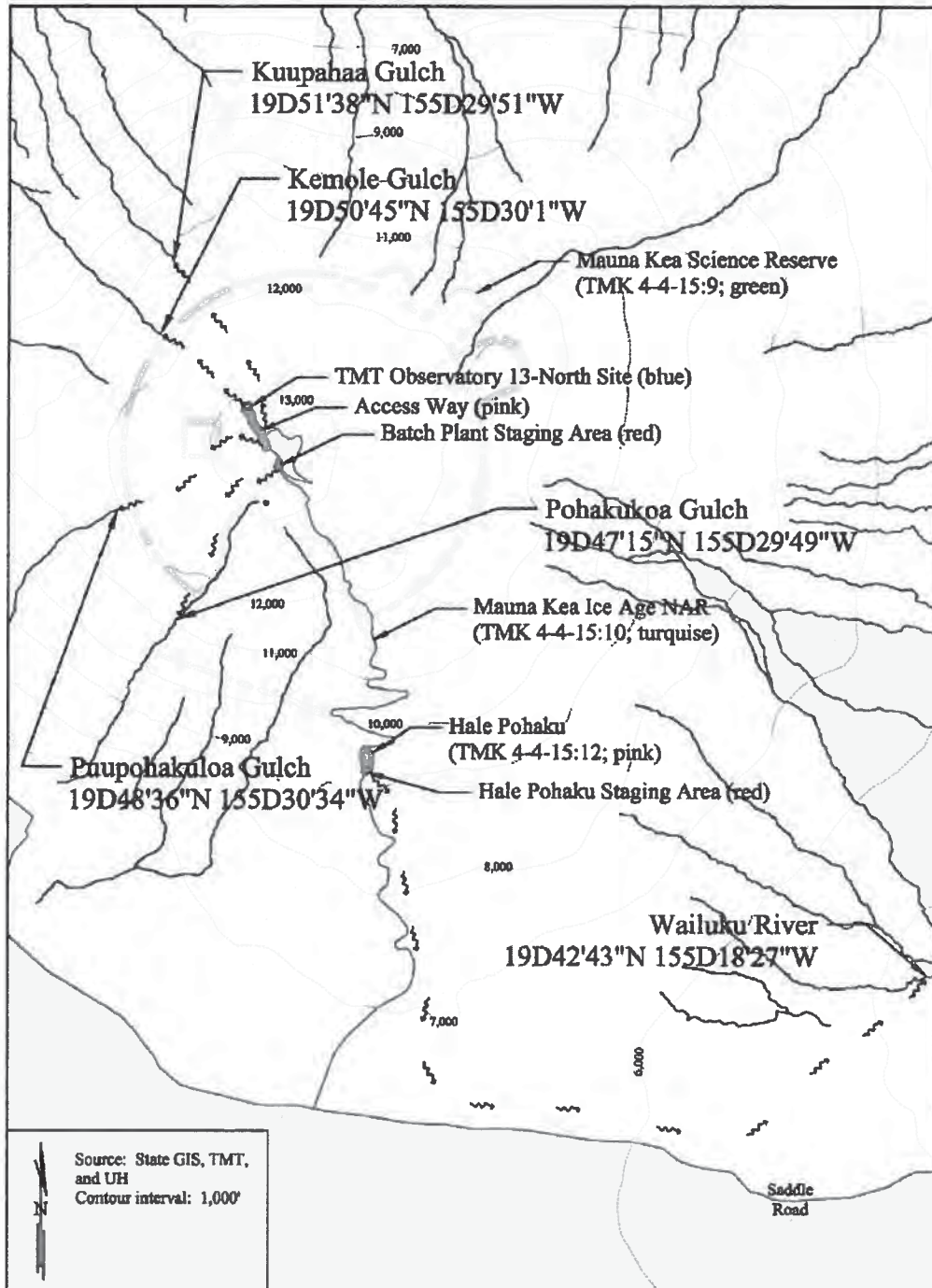
c. **Structural Controls**

- (1) Storm water flowing toward the construction area shall be diverted by using appropriate control measures, as practical.
- (2) Erosion Control Measures shall be designed according to the size of disturbed or drainage areas to detain runoff and trap sediment.
- (3) Water must be discharged in a manner that the discharge shall not cause or contribute to a violation of the basic water quality criteria as specified in HAR, Chapter 11-54, Section 11-54-4.

S000431.FNL.14

PART D
PERMIT NO. HI S000431
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D. MAPS



Location & Outfall Map



TRANSMITTAL REQUIREMENTS AND CERTIFICATION STATEMENT FOR E-PERMITTING INDIVIDUAL NPDES APPLICATION SUBMISSIONS

1. Submission and File Numbers

e-Permitting Submission #: HNJ-C0E1-MHW8X

I am submitting a (check only one):

Initial Individual NPDES application.

Revised Individual NPDES application, Permit Number: _____

Renewal Individual NPDES application, Permit Number: HI S000431

2. Certification Statement

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature  Date Signed 11/16/18

Printed First and Last Name Gary Sanders

3. Transmittal Requirements (Check all.)

I have read the instructions on Page 2.

If I do not follow all of the instructions on Page 2, I acknowledge that:

- a. This submittal will not be accepted by the Clean Water Branch (CWB);
- b. Processing of my NPDES application will not begin;
- c. I am delaying the processing of my NPDES application; and
- d. The CWB may deny my request for NPDES permit coverage with or without prejudice.

The signature provided in Item No. 2 is an original signature.

My CD or DVD is attached. This CD or DVD contains only the downloaded e-Permitting submission identified in Item No. 1 above. I have not altered this file.

4. Filing Fee [Check the applicable box(es).]

A \$1000 check made payable to the State of Hawaii is attached.

The filing fee was paid online through the e-Permitting Portal.

I am submitting a revised Individual NPDES application. My filing fee has already been paid under the initial submittal.

I am a State agency, and I am requesting a Bill for Collection.

Exhibit H
Flores-Case Ohana Memorandum

IMPORTANT INSTRUCTIONS:

You are required to follow these instructions to complete your e-Permitting Individual NPDES application initial, revised, or renewal submittal. Failure to follow all of these instructions will delay the processing of your submittal and may result in the denial of your request for NPDES permit coverage. **Processing of your submission will not begin until the Clean Water Branch (CWB) receives all of the items below.**

Item No. 1 – Submission and File Numbers

- a. Enter your e-Permitting Submission #. You may find your unique e-Permitting Submission # (e.g. 15H-ZGVV-421H) in your History Link of the e-Permitting Portal. If you are submitting a revised Individual NPDES application, the e-Permitting Submission # will contain the version (e.g. 15H-ZGVV-421H, v1).
- b. Check only one (1) box to indicate if you are submitting an Initial Individual NPDES application (new submittal), a Revised Individual NPDES application (revised submittal to address CWB comments), or a Renewal Individual NPDES application (submittal to renew existing Individual NPDES permit coverage).
- c. Enter your permit number if you are revising an Initial Individual NPDES application to respond to CWB comments. The CWB comments will contain the permit number. You will not need to provide a permit number if you are submitting an Initial Individual NPDES application.

Item No. 2 – Certification Statement

- a. This is the certification statement for the e-Permitting submission # identified in Item No. 1.
- b. Enter the Printed First and Last Name.
 - i. For initial and renewal submittals, the Printed First and Last Name must be the Certifying Person identified in Section No. 2 of the e-Permitting Individual NPDES application form.
 - ii. For revised submittals, the Printed First and Last Name may be either the Certifying Person identified in Section No. 2 of the e-Permitting Individual NPDES application form or the duly authorized representative identified in Section No. 8 of the e-Permitting Individual NPDES form.
- c. Enter the Date Signed.
- d. Provide an original Certification signature (hard copy of this form). Someone else may sign “for” the individual listed in the Printed First and Last Name.

Item No. 3 – Transmittal Requirements

- a. You are required to check all of the boxes.
- b. Provide a CD or DVD containing the e-Permitting submission in PDF or ZIP. To download the submission, click on the History Link in the e-Permitting Portal (after you submitted the application). Locate your submission and press the view button under the Action column. Then you may either:
 - i. Press the Print button, scan the document, save the document as a PDF, and save the PDF and all your attachments on the CD or DVD; or
 - ii. Press the Print Screen button on your keyboard, paste the image into a text editor (e.g. MS Word), convert the text file as a PDF, and save the PDF and all your attachments on the CD or DVD; or
 - iii. Press the Download Submission button. A PDF file will be generated if you have no attachments. A ZIP file will be created if you have attachments. Save the PDF or ZIP file on the CD or DVD.

Do not add additional files to the CD or DVD. Your CD or DVD shall match your e-Permitting submission #.

- a. You are required to check only one (1) of the boxes.
- b. A \$1000 filing fee is required for all Initial Individual NPDES applications.
- c. A \$1000 filing fee is required for all Renewal Individual NPDES applications.
- d. If you are a State agency, you may request a Bill for Collection even if paying online.

Additional

- a. Mail or deliver this form and all attachments to the Department of Health, Clean Water Branch, Hale Ola, Room 225, 2827 Waimano Home Road, Pearl City, Oahu, Hawaii 96782.



P L A N N I N G
S O L U T I O N S

November 29, 2018

Department of Health
Clean Water Branch
Hale Ola Building, Room 225
2827 Waimano Home Road
Pearl City, Hawai'i 96782

**Subject: e-Permitting Submittal # HNJ-C0E1-MHW8X
Notice of Intent, Form C, Individual Permit Renewal
Thirty Meter Telescope
Maunakea, Hawai'i**

Dear Sir or Madam:

Please find enclosed the required certification statement and DVD containing the downloaded submission from the e-Permitting portal. The permit fee has been paid on-line.

If you have any questions or require additional items, please contact me at 550-4559. Planning Solutions, Inc. and the TMT International Observatory appreciate your attention to this matter.

Sincerely,

Jim Hayes
Principal Planner

Enclosures:

Certification Statement
DVD

cc: Paul Gillett, via electronic mail

Exhibit H

Flores-Case Ohana Memorandum

Pacific Park Plaza Suite 950 • 711 Kapi'olani Boulevard • Honolulu, Hawai'i 96813-5213
Phone: 808-550-4483 • www.psi-hi.com

version

(Submission #: HNJ-C0E1-MHW8X, version 1)

Summary

Submission #:	HNJ-C0E1-MHW8X	Date Submitted:	11/29/2018 3:01 PM
Form:	version (CWB Individual NPDES Form)	Status:	Submitted
Submitted By:	James T Hayes	Submission Creator:	James T Hayes
Active Steps:	Assign To		
File/Reference #:		Reference #:	
Description:	CWB Individual NPDES Form		

Notes

There are currently no Submission Notes.

Details

1a. New NPDES Application

I read HAR, Chapters 11-54 and 11-55. I certify that I am submitting this NPDES application since my project/facility/activity/discharge and my organization will comply with these rules and the NPDES Permit that the DOH may issue for my project/facility/activity/discharge. I certify that I will design, implement, operate, and maintain appropriate treatment/controls to ensure that my activity/discharge will not violate HAR, Chapters 11-54 and 11-55.

Yes.

Is your submission for a new NPDES permit (Initial Individual NPDES permit application or a Revised Individual NPDES permit application)?

No, my submission is a Renewal Individual NPDES application.

If you selected "Yes" above, please complete the rest of this section. Skip Section 1b and proceed to Section 2. If you selected "No" above, please skip the remainder of this section and proceed to Section 1.b.

NPDES permits cannot be issued for "after the fact" discharges/activities. For new NPDES applications, you are required to certify below that the information provided in this NPDES application does not include "after the fact" discharges/activities.

NONE PROVIDED

You are required to report any discharges/activities associated with your project/facility that started before obtaining NPDES permit coverage. This only applies to discharges to State waters and activities that require NPDES permit coverage [e.g. construction activities that disturb one (1) acre or more]. Please select one (1) of the options below.

NONE PROVIDED

I certify under penalty of law that my proposed discharge will not impair any State water (including but not limited to rivers, streams, wetlands, ponds, ground waters, and ocean), Native Hawaiian cultural resources (including but not limited to burial sites/iwi, heiau, and taro loi), or the exercise of traditional Native Hawaiian cultural practices

Yes. I certify.

If you answered No above, describe the step(s) you will take to reasonably protect those State waters, Native Hawaiian resources, or exercise of traditional Native Hawaiian cultural practices. Please only include the steps that have been accepted by the Office of Hawaiian Affairs and other appropriate agencies. Note: It is your responsibility under the Constitution of the State of Hawaii to mitigate any impacts.

Exhibit 1
Flores-Case Onama Memorandum

1b. Renewal NPDES Application

Provide the previously assigned Permit Number (e.g. HI0021841).

HIS000431

Historic Effluent Limitations and Monitoring Data Spreadsheet

You are required to download and complete the Historic Effluent Limitations and Monitoring Data Spreadsheet below only if your NPDES permit contains numeric effluent limitations. This does not apply to NPDES permits for discharges of storm water associated with construction activities.

[Historic Effluent Limitations and Monitoring Data Spreadsheet](#)

Upload Completed Historic Effluent Limitations and Monitoring Data Spreadsheet- Attachment

NONE PROVIDED

Comment: NONE PROVIDED

Provide a summary of all DOH-CWB and/or U.S. EPA inspections conducted at your facility during the current permit term. Include the inspection date, findings, and all corrective actions. This applies to all NPDES permits.

None

Please report all of your existing NPDES permit submittal requirements. List the required submittal (e.g. DMR, Nutrient Management Plan, BMP Plan, TRE/TIE, etc.); the due date; and your submittal date. This applies to all NPDES permits.

Condition B.1.a. The County-approved ESC Plan and/or Grading Permit; no due date; submitted 8/13/14. Condition B.1.b. Operator or General Contractor information; no due date; submitted 8/12/14. Condition B.3. Notification of Start; no due date; submitted 9/11/2014. Condition B.4. Solid Waste Disclosure Form for Construction Sites; no due date; submitted 8/14/14. Condition B.10. Waste Load Allocation (WLA) Implementation and Monitoring Plan; no due date; has not been submitted (TMDLs have not been established for the project area so this requirement has not been triggered).

Effluent Violation Spreadsheet

You are required to download and complete the Effluent Violation Spreadsheet below only if your NPDES permit contains numeric effluent limitations. This does not apply to NPDES permits for discharges of storm water associated with construction activities.

[Effluent Violation Spreadsheet](#)

Upload Completed Effluent Violation Spreadsheet- Attachment

NONE PROVIDED

Comment: NONE PROVIDED

Please describe all actions you have taken to prevent all of the violations above from occurring again. You are required to provide this information with your renewal application. The DOH-CWB will take this into consideration when deciding whether to renew your permit or deny your renewal application. Pursuant to HAR 11-55-17, noncompliance by the Permittee with any conditions of the NPDES permit is grounds for denial of the renewal NPDES application.

NONE PROVIDED

2. Owner Information

Owner Legal Name

TMT International Observatory

Owner Department

NONE PROVIDED

Owner Division

NONE PROVIDED

Owner Mailing Address

100 West Walnut Street, Suite 300

Owner's Street Address

100 West Walnut Street, Suite 300
Pasadena, CA 91124

Owner Type

Industrial - Private Project

Signatory Type

The person certifying this NPDES application must meet one of the following descriptions and be employed by the Owner. Please identify your appropriate signatory type based on the items listed below.

State Agency: I certify that for a state agency, I am a principal executive officer or ranking elected official.

Municipal Agency: I certify that for a municipal agency, I am a principal executive officer or ranking elected official.

Non-Federal Public Agency: I certify that for a non-federal public agency, I am a principal executive officer or ranking elected official.

Federal Agency: I certify that for a federal agency, I am the chief executive officer of the agency, or I am the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

Partnership: I certify that I am a general partner for a partnership.

Proprietorship: I certify that I am the proprietor for a sole proprietorship.

Corporation Officer: I certify that for a corporation, I am the President, Vice President, Secretary, or Treasurer of the corporation and in charge of a principal business function, or I perform similar policy or decision-making functions for the corporation.

Corporation Manager: I certify that for a corporation, I am the Manager of one or more manufacturing, production, or operating facilities and am authorized to make management decisions which govern the operation of the regulated facility or facilities including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations. I can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements and authority to sign documents has been assigned or delegated to me in accordance with corporate procedures.

Trust: I certify that for a trust, I am a trustee.

LLC: I certify that for a limited liability company (LLC), I am the Manager or a Member authorized to make management decisions for the LLC and am in charge of a principal business function, or I perform similar policy or decisionmaking functions for the LLC.

Please Select the Signatory Type based on the above descriptions.

Corporation Manager

Certifying Person Salutation

Mr.

Certifying Person First Name

Exhibit H
Flores-Case Ohana Memorandum
Gary

Certifying Person Last Name

Sanders

Certifying Person Title

Project Manager

Certifying Person Email Address

sanders@tmt.org

Certifying Person Phone Number (e.g., 555-555-5555)

626-395-2997

Certifying Person Alternate Phone Number (cell) (e.g., 555-555-5555)

808-896-6963

Certifying Person Fax Number (e.g., 555-555-5555)

626-296-1887

The Owner's contact person may be the staff person with direct responsibility for the facility or project, not necessarily the certifying or "responsible" person.

Owner Contact Person's Salutation

Mr.

Owner Contact Person's First Name

Paul

Owner Contact Person's Last Name

Gillett

Owner Contact Person's Position Title

Facilities Department Head

Owner Contact Person's Email

pgillett@tmt.org

Owner Contact Person's Phone number (e.g., 555-555-5555)

626-395-1654

Owner Contact Person's Alternate Phone Number (cell) (e.g., 555-555-5555)

808-315-2587

Owner Contact Person's Fax number (e.g., 555-555-5555)

626-296-1887

3. Operator or General Contractor Contact Information

Will Operator or General Contractor information be submitted at least 30 calendar days before the start of construction activities?

No (operator/general contractor information is provided below)

Operator/General Contractor Legal name

Exhibit H Goodfellow Bros., LLC

Flores-Case Ohana Memorandum
Operator/General Contractor Department

NONE PROVIDED

Operator/General Contractor Division

NONE PROVIDED

Operator/General Contractor Mailing address

P.O. Box 383729
Waikoloa, HI 96738

Operator/General Contractor Street address:

68-1244 Waikoloa Road
Waikoloa, HI 96738

Operator/General Contractor Contact Person's Salutation

Mr.

Operator/General Contractor Contact Person's First Name

John

Operator/General Contractor Contact Person's Last Name

Makoff

Operator/General Contractor Contact Person's Position Title

Regional Manager

Operator/General Contractor Contact Person's Email

johnm@goodfellowbros.com

Operator/General Contractor Contact Person's Phone number (e.g., 555-555-5555)

808-887-6511

Operator/General Contractor Contact Person's Alternate Phone Number (cell) (e.g., 555-555-5555)

808-960-4648

Operator/General Contractor Contact Person's Fax number (e.g., 555-555-5555)

808-887-6522

4. Facility/Project Information

Enter the Facility or Project Name

The Facility or Project Name will appear on all correspondence, official files, and permits.

Facility or Project Name

TMT International Observatory

Provide the Mailing Address

The mailing address may be the mailing address of the facility/s or project's contact person.

Mailing Address

100 West Walnut Street, Suite 300
Pasadena, CA 91124

Exhibit H
Flores-Case Ohana Memorandum

The street address is the facility or project location with respect to identifiable street names or adjacent developments or properties (i.e., 1234 15th Drive or northwest corner of 1st Street and X Avenue).

Street Address (i.e. the location of the project or facility)

Mauna Kea Summit Loop Road, Area E

Provide the Facility/Project Contact Person information.

Provide the facility/project contact person information. The facility/project contact person can be anyone (e.g. consultant, staff, etc.).

Facility/Project Contact Person Salutation

Mr.

Facility/Project Contact Person's First Name

John

Facility/Project Contact Person's Last Name

Makoff

Facility/Project Contact Person's Title

Regional Manager

Facility/Project Contact Person's Email

johnm@goodfellowbros.com

Facility/Project Contact Person Phone Number (e.g., 555-555-5555)

808-887-6511

Facility/Project Contact Person Alternate Phone Number (cell) (e.g., 555-555-5555)

808-960-4648

Facility/Project Contact Person Fax Number (e.g., 555-555-5555)

808-887-6522

Facility/Project Front Gate Location Coordinates or Start of Linear Construction Location Coordinates

19.82769937757558,-155.47941337260704

NONE PROVIDED

5. Tax Map Key (TMK) No.

Facility/Project Tax Map Key (TMK) Number(s)

You are required to download and complete the TMK spreadsheet below. All TMK numbers involved in the facility/project need to be disclosed. A minimum of one (1) TMK is required.

[TMK Spreadsheet](#)

Upload Completed TMK Spreadsheet- Attachment

TMK NPDES Spreadsheet-TMT.xlsx - 11/16/2018 03:29 PM

Comment: NONE PROVIDED

6. Receiving State Water(s) Information (1)

HAR, Section 11-54-1 defines State waters as: All waters, fresh, brackish, or salt around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all state waters, including wetlands, subject to the following exceptions: (1) This chapter does not apply to groundwater. (2) This chapter does not apply to ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system. (3) This chapter does not apply to ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into any other state waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined at 40 C.F.R. 122.2.

A receiving State water is the first State water that receives the discharge. Note: You must identify a receiving State Water before an NPDES permit can be issued. Identify the receiving State water name in relation to the facility or project site based on the topography or contours of the land, excluding evaporation, percolation, retention, detention, etc. The receiving State water must be a surface water. Sample responses for this item include: Pacific Ocean at Sandy Beach, Honolulu Harbor, Pearl Harbor, Aiea Stream, Unnamed Stream Kaloi Gulch, Unnamed Dry Gulch, Unnamed Wetlands, etc.

Receiving State Waters Name

Kemole Gulch

Select the receiving State water CLASSIFICATION:

Classifications are defined in HAR, Chapter 11-54 and on the Water Quality Standards Maps available on the CWB website. The Water Quality Standards Maps are provided for general information only and are to be used in conjunction with HAR, Chapter 11-54. Click on the link below to download a copy of HAR, Chapter 11-54.

[HAR, Chapter 11-54](#)

The Water Quality Standards Maps can be found by clicking on the link below.

[Water Quality Standards Maps](#)

Receiving State Water Classification

Class 2, Inland

Coordinates of the Discharge Point into State waters

Provide the coordinates of the discharge point (in decimal degrees) where discharge from the facility or construction site first enters the receiving State water. If the discharge first enters a storm drainage system, provide the discharge point coordinates for the outfall where the storm drainage system enters State waters. If the storm water discharge enters the receiving State water as a sheet flow, provide the coordinates based on the limits of discharge. For Example: Type: Discharge Point 1 (From) Latitude 21.274685 N, Longitude 158.012768 W (Click the "+" button in the tab heading row above to enter the next location) Then type: Discharge Point 1 (To) Latitude 21.304811N, Longitude 158.022721 W

Properly label the discharge points with numbers (i.e., Discharge Point No. 1, Discharge Point No. 2, etc.) which correspond to the location map(s) and flow chart(s) submitted.

Discharge Point label

Kemole Gulch

Discharge Point

19.846013436267245,-155.5002144512972

NONE PROVIDED

List all discharges at this discharge point (e.g. storm water associated with construction activities; storm water associated with industrial activities; hydrotesting waters; dewatering effluent; cooling water; secondary treated wastewater effluent; etc.).

storm water associated with construction activities

Is the receiving State water on the Section 303(d) List?

Click on the link below to view the Section 303(d) List.

[Section 303\(d\) List](#)

Is the receiving State water on the Section 303(d) List?

No

If your Receiving Water is on the Section 303(d) List, please provide the impairment pollutant(s).

NONE PROVIDED

Are there additional discharge points into receiving State waters?

Yes

If YES was selected, click the "+" button in the tab area at the top of this section to describe additional discharge points into receiving State waters.

6. Receiving State Water(s) Information (2)

HAR, Section 11-54-1 defines State waters as: All waters, fresh, brackish, or salt around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all state waters, including wetlands, subject to the following exceptions: (1) This chapter does not apply to groundwater. (2) This chapter does not apply to ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system. (3) This chapter does not apply to ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into any other state waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined at 40 C.F.R. 122.2.

A receiving State water is the first State water that receives the discharge. Note: You must identify a receiving State Water before an NPDES permit can be issued. Identify the receiving State water name in relation to the facility or project site based on the topography or contours of the land, excluding evaporation, percolation, retention, detention, etc. The receiving State water must be a surface water. Sample responses for this item include: Pacific Ocean at Sandy Beach, Honolulu Harbor, Pearl Harbor, Aiea Stream, Unnamed Stream Kaloi Gulch, Unnamed Dry Gulch, Unnamed Wetlands, etc.

Receiving State Waters Name

Kuupahaa Gulch

Select the receiving State water CLASSIFICATION:

Classifications are defined in HAR, Chapter 11-54 and on the Water Quality Standards Maps available on the CWB website. The Water Quality Standards Maps are provided for general information only and are to be used in conjunction with HAR, Chapter 11-54. Click on the link below to download a copy of HAR, Chapter 11-54.

[HAR, Chapter 11-54](#)

The Water Quality Standards Maps can be found by clicking on the link below.

[Water Quality Standards Maps](#)

Receiving State Water Classification

Class 2, Inland

Coordinates of the Discharge Point into State waters

Provide the coordinates of the discharge point (in decimal degrees) where discharge from the facility or construction site first enters the receiving State water. If the discharge first enters a storm drainage system, provide the discharge point coordinates for the outfall where the storm drainage system enters State waters. If the storm water discharge enters the receiving State water as a sheet flow, provide the coordinates based on the limits of discharge. For Example: Type: Discharge Point 1 (From) Latitude 21.274685 N, Longitude 158.012768 W (Click the "+" button in the tab heading row above to enter the next location) Then type: Discharge Point 1 (To) Latitude 21.304811N, Longitude 158.022721 W

Properly label the discharge points with numbers (i.e., Discharge Point No. 1, Discharge Point No. 2, etc.) which correspond to the location map(s) and flow chart(s) submitted.

Discharge Point label

Kuupahaa Gulch

Discharge Point

19.860556,-155.4975

NONE PROVIDED

Exhibit H

Flores-Case, Ohana Memorandum
List all discharges at this discharge point (e.g. storm water associated with construction activities; storm water associated with industrial activities; hydrotesting waters; dewatering effluent; cooling water; secondary treated wastewater effluent; etc.).

Storm water associated with construction activities

Is the receiving State water on the Section 303(d) List?

Click on the link below to view the Section 303(d) List.

[Section 303\(d\) List](#)

Is the receiving State water on the Section 303(d) List?

No

If your Receiving Water is on the Section 303(d) List, please provide the impairment pollutant(s).

NONE PROVIDED

Are there additional discharge points into receiving State waters?

Yes

If YES was selected, click the "+" button in the tab area at the top of this section to describe additional discharge points into receiving State waters.

6. Receiving State Water(s) Information (3)

HAR, Section 11-54-1 defines State waters as: All waters, fresh, brackish, or salt around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all state waters, including wetlands, subject to the following exceptions: (1) This chapter does not apply to groundwater. (2) This chapter does not apply to ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system. (3) This chapter does not apply to ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into any other state waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined at 40 C.F.R. 122.2.

A receiving State water is the first State water that receives the discharge. Note: You must identify a receiving State Water before an NPDES permit can be issued. Identify the receiving State water name in relation to the facility or project site based on the topography or contours of the land, excluding evaporation, percolation, retention, detention, etc. The receiving State water must be a surface water. Sample responses for this item include: Pacific Ocean at Sandy Beach, Honolulu Harbor, Pearl Harbor, Aiea Stream, Unnamed Stream Kalo Gulch, Unnamed Dry Gulch, Unnamed Wetlands, etc.

Receiving State Waters Name

Puupohakuloa Gulch

Select the receiving State water CLASSIFICATION:

Classifications are defined in HAR, Chapter 11-54 and on the Water Quality Standards Maps available on the CWB website. The Water Quality Standards Maps are provided for general information only and are to be used in conjunction with HAR, Chapter 11-54. Click on the link below to download a copy of HAR, Chapter 11-54.

[HAR, Chapter 11-54](#)

The Water Quality Standards Maps can be found by clicking on the link below.

[Water Quality Standards Maps](#)

Receiving State Water Classification

Class 2, Inland

Coordinates of the Discharge Point into State waters

Provide the coordinates of the discharge point (in decimal degrees) where discharge from the facility or construction site first enters the receiving State water. If the discharge first enters a storm drainage system, provide the discharge point coordinates for the outfall where the storm drainage system enters State waters. If the storm water discharge enters the receiving State water as a sheet flow, provide the coordinates based on the limits of discharge. For Example: Type: Discharge Point 1 (From) Latitude 21.274685 N, Longitude 158.012768 W (Click the "+" button in the tab heading row above to enter the next location) Then type: Discharge Point 1 (To) Latitude 21.304811 N, Longitude 158.022721 W

Properly label the discharge points with numbers (i.e., Discharge Point No. 1, Discharge Point No. 2, etc.) which correspond to the location map(s) and flow chart(s) submitted.

Discharge Point label

Puupohakuloa Gulch

Discharge Point

19.809768947346164,-155.50930258752993

NONE PROVIDED

List all discharges at this discharge point (e.g. storm water associated with construction activities; storm water associated with industrial activities; hydrotesting waters; dewatering effluent; cooling water; secondary treated wastewater effluent; etc.).

Storm water associated with construction activities

Is the receiving State water on the Section 303(d) List?

Click on the link below to view the Section 303(d) List.

[Section 303\(d\) List](#)

Is the receiving State water on the Section 303(d) List?

No

If your Receiving Water is on the Section 303(d) List, please provide the impairment pollutant(s).

NONE PROVIDED

Are there additional discharge points into receiving State waters?

Yes

If YES was selected, click the "+" button in the tab area at the top of this section to describe additional discharge points into receiving State waters.

6. Receiving State Water(s) Information (4)

HAR, Section 11-54-1 defines State waters as: All waters, fresh, brackish, or salt around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all state waters, including wetlands, subject to the following exceptions: (1) This chapter does not apply to groundwater. (2) This chapter does not apply to ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system. (3) This chapter does not apply to ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into any other state waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined at 40 C.F.R. 122.2.

A receiving State water is the first State water that receives the discharge. Note: You must identify a receiving State Water before an NPDES permit can be issued. Identify the receiving State water name in relation to the facility or project site based on the topography or contours of the land, excluding evaporation, percolation, retention, detention, etc. The receiving State water must be a surface water. Sample responses for this item include: Pacific Ocean at Sandy Beach, Honolulu Harbor, Pearl Harbor, Aiea Stream, Unnamed Stream Kaloi Gulch, Unnamed Dry Gulch, Unnamed Wetlands, etc.

Receiving State Waters Name

Pohakuloa Gulch

Select the receiving State water CLASSIFICATION:

Classifications are defined in HAR, Chapter 11-54 and on the Water Quality Standards Maps available on the CWB website. The Water Quality Standards Maps are provided for general information only and are to be used in conjunction with HAR, Chapter 11-54. Click on the link below to download a copy of HAR, Chapter 11-54.

[Water Quality Standards Maps](#)

Receiving State Water Classification

Class 2, Inland

Coordinates of the Discharge Point into State waters

Provide the coordinates of the discharge point (in decimal degrees) where discharge from the facility or construction site first enters the receiving State water. If the discharge first enters a storm drainage system, provide the discharge point coordinates for the outfall where the storm drainage system enters State waters. If the storm water discharge enters the receiving State water as a sheet flow, provide the coordinates based on the limits of discharge. For Example: Type: Discharge Point 1 (From) Latitude 21.274685 N, Longitude 158.012768 W (Click the "+" button in the tab heading row above to enter the next location) Then type: Discharge Point 1 (To) Latitude 21.304811 N, Longitude 158.022721 W

Properly label the discharge points with numbers (i.e., Discharge Point No. 1, Discharge Point No. 2, etc.) which correspond to the location map(s) and flow chart(s) submitted.

Discharge Point label

Pohakuloa Gulch

Discharge Point

19.875692,-155.496944
NONE PROVIDED

List all discharges at this discharge point (e.g. storm water associated with construction activities; storm water associated with industrial activities; hydrotesting waters; dewatering effluent; cooling water; secondary treated wastewater effluent; etc.).

Storm water associated with construction activities

Is the receiving State water on the Section 303(d) List?

Click on the link below to view the Section 303(d) List.

[Section 303\(d\) List](#)

Is the receiving State water on the Section 303(d) List?

No

If your Receiving Water is on the Section 303(d) List, please provide the impairment pollutant(s).

NONE PROVIDED

Are there additional discharge points into receiving State waters?

Yes

If YES was selected, click the "+" button in the tab area at the top of this section to describe additional discharge points into receiving State waters.

6. Receiving State Water(s) Information (5)

HAR, Section 11-54-1 defines State waters as: All waters, fresh, brackish, or salt around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all state waters, including wetlands, subject to the following exceptions: (1) This chapter does not apply to groundwater. (2) This chapter does not apply to ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system. (3) This chapter does not apply to ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into any other state waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined at 40 C.F.R. 122.2.

NPDES permit can be issued. Identify the receiving State water name in relation to the facility or project site based on the topographic contours of the land, excluding evaporation, percolation, retention, detention, etc. The receiving State water must be a surface water. Sample responses for this item include: Pacific Ocean at Sandy Beach, Honolulu Harbor, Pearl Harbor, Aiea Stream, Unnamed Stream Kaloi Gulch, Unnamed Dry Gulch, Unnamed Wetlands, etc.

Receiving State Waters Name

Wailuku River

Select the receiving State water CLASSIFICATION:

Classifications are defined in HAR, Chapter 11-54 and on the Water Quality Standards Maps available on the CWB website. The Water Quality Standards Maps are provided for general information only and are to be used in conjunction with HAR, Chapter 11-54. Click on the link below to download a copy of HAR, Chapter 11-54.

[HAR, Chapter 11-54](#)

The Water Quality Standards Maps can be found by clicking on the link below.

[Water Quality Standards Maps](#)

Receiving State Water Classification

Class 2, Inland

Coordinates of the Discharge Point into State waters

Provide the coordinates of the discharge point (in decimal degrees) where discharge from the facility or construction site first enters the receiving State water. If the discharge first enters a storm drainage system, provide the discharge point coordinates for the outfall where the storm drainage system enters State waters. If the storm water discharge enters the receiving State water as a sheet flow, provide the coordinates based on the limits of discharge. For Example: Type: Discharge Point 1 (From) Latitude 21.274685 N, Longitude 158.012768 W (Click the "+" button in the tab heading row above to enter the next location) Then type: Discharge Point 1 (To) Latitude 21.304811N, Longitude 158.022721 W

Properly label the discharge points with numbers (i.e., Discharge Point No. 1, Discharge Point No. 2, etc.) which correspond to the location map(s) and flow chart(s) submitted.

Discharge Point label

Wailuku River

Discharge Point

19.711944,-155.3075
NONE PROVIDED

List all discharges at this discharge point (e.g. storm water associated with construction activities; storm water associated with industrial activities; hydrotesting waters; dewatering effluent; cooling water; secondary treated wastewater effluent; etc.).

Storm water associated with construction activities

Is the receiving State water on the Section 303(d) List?

Click on the link below to view the Section 303(d) List.

[Section 303\(d\) List](#)

Is the receiving State water on the Section 303(d) List?

Yes

If your Receiving Water is on the Section 303(d) List, please provide the impairment pollutant(s).

NO3+NO2

Are there additional discharge points into receiving State waters?

No

7. Receiving Drainage System(s) Information (1)

Does the discharge enter a **STORMWATER DRAINAGE SYSTEM** before discharging into the receiving State waters?

No

If YES selected, provide the information for ALL of the following questions in this section.

Drainage System Owner's Name

NONE PROVIDED

Drainage System Owner's Approval

Please submit the Drainage System owner's approval to allow the subject discharge to enter their Drainage System. If the project owner also owns the Drainage System, you do not have to submit the approval.

Drainage System Owner's Approval to Discharge- Attachment

NONE PROVIDED

Comment: NONE PROVIDED

Please note that if you did not attach the Drainage System Owner's Approval to this application, you are required to submit the Approval to Discharge at least 30 calendar days before the start of construction activities or discharge, whichever is sooner.

Will Drainage System Owner's approval be submitted at least 30 calendar days before start of construction?

NONE PROVIDED

If the Drainage System Owner is the same as the Owner of this Project, please select one of the following.

NONE PROVIDED

Are there additional Drainage Systems that may receive stormwater runoff from the project?

NONE PROVIDED

If YES was selected, click the "+" button in the tab area at the top of this section to provide additional Receiving Drainage System information.

8. Authorized Representative**Authorization**

The Certifying Person hereby authorizes the named individual or any individual occupying the named position of the company/organization listed below to act as our representative to submit information/documents necessary to complete the NPDES application to discharge to State waters from the subject facility. Our representative is further authorized to submit information/documents for compliance with the NPDES permit conditions, except submittal of the Notice of Cessation (NOC). The Owner hereby agrees to comply with and be responsible for all NPDES permit conditions. This authorization begins with NPDES application processing and ends upon receipt of the NOC by the CWB. The Owner authorizes the duly authorized representative to submit additional information/documents necessary to complete the NPDES application and to submit information/documents to comply with the NPDES permit conditions. The Owner is responsible for all information/documents submitted by the duly authorized representative for completion of the NPDES application and for compliance with the NPDES permit conditions. The Certifying Person is required to sign the NOC Form for the project. After receipt of the NOC for the project, the duly authorized representative is no longer recognized by the CWB. The responsibility of the authorized representative cannot be delegated to an outside consultant with no financial responsibility for the company - they cannot sign as the "authorized representative" on behalf of the Owner. This requirement stems from the fact that self-reporting is critical under the Clean Water Act and Hawaii Water Pollution statutes; reports filed with CWB can have serious legal consequences, including possible civil and even criminal liability. The Owner in signing reports, therefore, must be represented by someone who has some responsibility for the corporation's financial interests.

The Certifying Person attests that the authorized representative 1) meets the requirements of HAR 11-55-07(b) and 2) has

financial responsibility within the corporation/organization who can attest to the accuracy of reports either because he/she participated in the preparation of the report, or supervises those who did prepare it and can attest that those individuals followed standard protocols that ensure the accuracy of the report. Both the Certifying Person and authorized representative understand that they can be subject to civil and criminal liability for non-compliance with NPDES permit conditions, non-compliance with HAR Chapters 11-54 and 11-55, and for falsifying information.

Yes. I certify that the above is true.

Authorized Representative Contact Information

Complete the following for your Authorized Representative.

Authorized Representative Company/Organization Name

Goodfellow Bros., LLC

Authorized Representative Department

NONE PROVIDED

Authorized Representative Division

NONE PROVIDED

Authorized Representative Mailing Address

P.O. Box 383729
Waikoloa, HI 96738

Authorized Representative Street Address

68-1244 Waikoloa Road
Waikoloa, HI 96738

Authorized Representative First Name

John

Authorized Representative Salutation

Mr.

Authorized Representative Last Name

Mahoff

Authorized Representative Email Address

johnm@goodfellowbros.com

Authorized Representative Phone (e.g., 555-555-5555)

808-887-6511

Authorized Representative Alternate Phone (cell) (e.g., 555-555-5555)

808-960-4648

Authorized Representative Fax (e.g., 555-555-5555)

808-887-6522

9. Discharge Specific Attachments

a. Please select the form(s) for the discharge/activity you are requesting NPDES permit coverage. You may cover multiple discharges under one (1) NPDES permit application.

Form C - Discharges of storm water associated with construction activities.

b. Download and complete appropriate form(s).

For all of the discharges/activities you are requesting NPDES permit coverage (Section 9.a above), please download and complete all

Exhibit H
Flores-Cano Obama Memorandum

c. Upload completed form(s).- Attachment

NOIFormC-TMT.pdf - 11/29/2018 02:52 PM

Comment: NONE PROVIDED

d. Discharge specific forms.

Please see below for all of the discharge specific forms. A description of the discharge/activity is provided. Click on the link to download the form.

Form B - Discharges of storm water associated with industrial activities. NPDES permit coverage is required for discharges of storm water runoff associated with industrial activity(ies), as categorized in 40 CFR 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi).

[Click on this link to download Form B.](#)

Form C - Discharges of storm water associated with construction activities. NPDES permit coverage is required for activities that disturb one (1) acre or more of total land area. NPDES permit coverage is also required for activities that disturb less than one (1) acre of total land area that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) acre or more of total land area [40 CFR 122.26(b)(15)]. Land disturbance includes, but is not limited to clearing, grading, grubbing, uprooting of vegetation, demolition (even if leaving foundation slab), staging, stockpiling, excavation into pavement areas which go down to the base course, and storage areas (including areas on the roadway to park equipment if these areas are blocked off from public usage, grassed areas, or bare ground).

[Click on this link to download Form C.](#)

Form D - Discharges of treated effluent from leaking underground storage tank remedial activities. NPDES permit coverage is required for the release or discharge of treated ground water to State waters from the cleanup (or remedial action) of underground storage tanks that have leaked petroleum hydrocarbons.

[Click on this link to download Form D.](#)

Form E - Discharges of once through cooling water less than (1) million gallons per day. NPDES permit coverage is required for discharges to State waters of once through cooling water with a total flow of less than one (1) million gallons per day. "once through cooling water" means water passed through the main cooling condensers one or two times for the purpose of removing waste heat.

[Click on this link to download Form E.](#)

Form F - Discharges of hydrotesting waters. NPDES permit coverage is required for the release or discharge of hydrotesting waters to State waters. "Hydrotesting Waters" means water used to test the integrity of a tank or pipeline, pipeline disinfection, and/or pipeline flushing.

[Click on this link to download Form F.](#)

Form G - Discharges of construction activity dewatering. NPDES permit coverage is required for discharges to State waters of construction activity dewatering effluent. "Dewatering Effluent" is any type of water (e.g. ground water, storm water, stream water, ocean water, etc.) pumped from a construction area.

[Click on this link to download Form G.](#)

Form H - Discharges of treated process wastewater associated with petroleum bulk stations and terminals. NPDES permit coverage is required for discharges to State waters of treated process wastewater effluent from petroleum bulk stations and terminals. Treated process wastewater effluent includes tank water draws, product displacement process wastewater, wash down and fire hydrant system test waters, service station tank draws, recovered groundwater, and contaminated storm water runoff from the product storage and handling areas.

[Click on this link to download Form H.](#)

Form I - Discharges of treated process wastewater associated with well drilling activities. NPDES permit coverage is required for discharges to State waters of treated process wastewater associated with well drilling activities. Treated process wastewater includes well drilling slurries, lubricating fluids wastewaters, and well purge wastewaters.

[Click on this link to download Form I.](#)

Form K - Discharges of storm water and certain non-storm water discharges from small Municipal Separate Storm Sewer Systems (MS4s). NPDES permit coverage is required for storm water and certain non-storm water discharges to State waters from small MS4s.

[Click on this link to download Form K.](#)

Form L - Discharges of circulation water from decorative ponds or tanks. NPDES permit coverage is required for discharges to State waters of circulation water from decorative ponds or tanks containing fish or other aquatic species.

[Click on this link to download Form L.](#)

Form M- Point source discharges from the application of pesticides. NPDES permit coverage is required for the application of pesticides to State waters.

[Click on this link to download Form M.](#)

Form 2A - Pollutant discharges from a publicly owned treatment works to a State water.

[Click on this link to download Form 2A.](#)

Form 2B - Pollutant discharges from a concentrated animal feeding operation or aquatic animal production facility to a State water.

[Click on this link to download Form 2B.](#)

Form 2C - Discharges of wastewater to a State water from an existing facility, other than described in Form 2A and 2B.

[Click on this link to download Form 2C.](#)

Form 2D - Discharges of process wastewater to a State water from a new, proposed facility, other than described in Form 2A and 2B. Process wastewater is water that comes into direct contact with or results from the production or use of raw materials, intermediate product, finished product, byproduct, waste product, or wastewater.

[Click on this link to download Form 2D.](#)

Form 2E - Discharges of nonprocess wastewater which is not regulated by effluent limitation guidelines or new source performance standards. This form is intended primarily for use by dischargers (new or existing) of sanitary wastes and noncontact cooling water. It may not be used for discharges of storm water runoff or by educational, medical, or commercial chemical laboratories, or by publicly owned treatment works.

[Click on this link to download Form 2E.](#)

Form 2S - Sewage sludge (biosolids) for new and existing treatment works treating domestic sewage.

[Click on this link to download Form 2S.](#)

ZID/ZOM Form - Zone of Initial Dilution/Zone of Mixing.

[Click on this link to download the ZOM Form.](#)

Attachments

Date	Attachment Name	Context	Confidential?
11/16/2018 3:29 PM	TMK NPDES Spreadsheet-TMT.xlsx	v1 - 5. Tax Map Key (TMK) No.	No
11/29/2018 2:52 PM	NOIFormC-TMT.pdf	v1 - 9. Discharge Specific Attachments	No

Status History

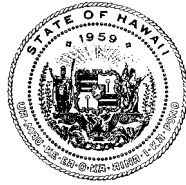
Date	User	Processing Status
11/16/2018 10:38:49 AM	James T Hayes	Draft
11/29/2018 3:01:29 PM	James T Hayes	Submitted

Exhibit H
Flores-Cruz Memorandum

Processing Steps

Step Name	Assigned To/Completed By	Date Completed
Application Submitted	James T Hayes	11/29/2018 3:01:28 PM
Assign To		
In Review		
Pending Applicant Action		
Issue NPDES Permit		

DAVID Y. IGE
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
EMD/CWB

03003PCTM.21

March 3, 2021

Mr. Gary Sanders
Project Manager
TMT International Observatory, LLC
100 West Walnut Street, Suite 300
Pasadena, California 91124

Attention: Mr. Paul Gillett
Facilities Department Head

Dear Mr. Sanders:

**Subject: Rescinding National Pollutant Discharge Elimination System (NPDES)
Revised Draft Permit for TMT International Observatory
Mauna Kea, Island of Hawaii, Hawaii
Permit No. HI S000431**

The Department of Health (DOH), Clean Water Branch (CWB) rescinds and voids the documents identified below:

1. Document No. 02038PCTM.19a, dated March 7, 2019, Notice of Proposed Water Pollution Control Permit for Thirty Meter Telescope International Observatory NPDES Permit No. HI S000431;
2. Draft form of Authorization to Discharge Under the National Pollutant Discharge Elimination System with respect to Permit No. HI S000431 dated March 7, 2019;
3. Document No. 02038PCTM.19c, dated March 7, 2019, Permit Rationale related to NPDES Permit No. HI S000431;
4. Document No. 01011PCTM.20, dated January 9, 2020, relating to DOH's response to public comments.

EXHIBIT "E"

Mr. Gary Sanders
March 3, 2021
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The documents were worded in a way that may imply that the Director of Health has made certain determinations with respect to the permit application related to Docket No. HI S000431. The DOH will issue a new tentative recommendation in accordance with applicable statute and rules.

Please review the enclosed Revised Draft NPDES permit and submit any comments you may have on this document to the CWB within 14 calendar days from the date of this letter.

If you do not have any comments, please choose a date for the public notice in the Hawaii Tribune Herald. You can contact the Hawaii Tribune Herald (contact: Ms. Lisa Kaukani, Tel: (808) 529-4344 or e-mail: lkaukani@staradvertiser.com) to find out when the public notice can be published. Please set the public notice date on a Thursday at least 9 calendar days from the time you inform the CWB of the publication date. Once you provide the CWB with the publication date, the public notice package will be prepared and sent to you.

The publication in the newspaper is for 1 day only. The public comment period is for 30 calendar days. Failure to publish the public notice on the specified date may result in denial of your NPDES Application. If the public notice generates sufficient interest, a public hearing will be held. Comments from the public will be received by the CWB for a period of 30 calendar days. Please be aware that all timely submitted public comments previously received by the DOH in response to the March 7, 2019, Public Notice and May 23, 2019, Notice of Public Hearing will be automatically included in the record for any proposed determination that will be considered prior to any final determination in Docket No. HI S000431.

Please also be aware that you are required to pay for all publication costs in accordance with Hawaii Administrative Rules §11-55-09(d) which states “[a]ll publication and mailing costs associated with the public notification of the director’s tentative determinations with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit.”

Mr. Gary Sanders
March 3, 2021
Page 3

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For future submittals, include Permit No. HI S000431 and the following certification statement in your cover letter:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Should you have any questions, please contact Mr. Colin Maruoka of the Engineering Section, CWB, at (808) 586-4309.

Sincerely,



ALEC WONG, P.E., CHIEF
Clean Water Branch

CTM

Enclosures: 1. Revised Draft NPDES Permit
2. Permit Rationale

- c: Water Division (WTR-5), CWA Standards and Permits Office, EPA, Region 9
[via e-mail kozelka.peter@epa.gov only]
Mr. James T. Hayes, Planning Solutions, Inc. [via e-mail jim@psi-hi.com only]
Ms. Jon Makoff, Goodfellow Bros., LLC [via e-mail johnm@goodfellowbros.com only]
Mr. Ian Sandison, Watanabe Ing LLP [via e-mail isandison@wik.com only]
Mr. Paul Gillett, TMT International Observatory, LLC
[via e-mail pgillett@tmt.org only]

DATED

OCTOBER 1, 2016

TMT INTERNATIONAL OBSERVATORY LLC

- and -

TMT OBSERVATORY CORPORATION

ASSET AND EMPLOYEE TRANSFER AGREEMENT



Hogan Lovells US LLP
875 3rd Avenue, New York, NY 10022, USA

EXHIBIT "F"

Exhibit H
Flores-Case Ohana Memorandum

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THIS AGREEMENT is made on

OCTOBER 1, 2016

BETWEEN:

- (1) **TMT International Observatory LLC**, a Delaware limited liability company ("**Buyer**"); and
- (2) **TMT Observatory Corporation**, a California non-profit membership corporation ("**Seller**") and, together with Buyer, the "**Parties**").

WHEREAS:

- (A) Seller owns certain Assets (as defined below) and is a party to certain Plans (as defined below).
- (B) WHEREAS, Buyer wishes to purchase from Seller, and Seller wishes to sell, assign and transfer to Buyer, all right, title and interests of the Seller in and to the Assets.
- (C) WHEREAS, Seller wishes to assign, and Buyer wishes to assume, the Plans.

IT IS AGREED:

1. **SALE AND PURCHASE OF ASSETS**

1.1 **Transfer of Assets.**

Subject to the terms and conditions hereof, Seller hereby sells, transfers, assigns and delivers to Buyer, and Buyer purchases from Seller, all right, title and interest of Seller in and to the assets listed on Schedule 1.1 (collectively, the "**Assets**"), free and clear of all liabilities, obligations, liens and encumbrances. Effective as of the Closing Date, Seller, for good and valuable consideration received, irrevocably conveys, transfers, assigns and delivers to Buyer, all of Seller's right, title and interest in, to and under all of the Assets, pursuant to this Agreement, TO HAVE AND TO HOLD such Assets to Buyer, its successors and assigns, for their exclusive use and benefit forever.

1.2 **No Other Assumption of Liabilities.**

Except to the extent provided in Section 2, the Buyer does not assume any obligation or liability of the Seller, and the Seller will continue to be liable for any and all liabilities of the Seller.

1.3 **Closing.**

- (a) The closing of the sale and purchase of the Assets and the assignment and assumption of the Plans (the "**Closing**") shall take place on October 1, 2016 or on such other date as the parties may agree to in writing (the "**Closing Date**").

1.4 **Consideration.**

The consideration for the assignment, transfer and delivery of the Assets by Seller to Buyer and subject to the terms and conditions hereof, shall be:

- (a) the undertaking by the Buyer (which undertaking the Buyer hereby gives) to offer employment to all of the Seller's employees on substantially the same terms as those employees are presently employed by the Seller; and
- (b) the agreement by the Buyer to assume the Plans, as stated in Section 2.3 of this Agreement.

1.5 **Allocation of Value of Consideration for Assets.**

The parties agree to allocate the value of the consideration for purposes, including tax and financial accounting purposes, of the Assets in accordance with Schedule 1.5 (which the parties agree was determined in an arm's length negotiation). The value of the consideration shall be allocated among the Assets in accordance with Section 1060 of the Code. The parties will each report the federal, state and local Tax consequences of the purchase and sale contemplated hereby (including the filing of Internal Revenue Service Form 8594) in a manner consistent with Schedule 1.5, will cooperate with each other in connection with the preparation, execution and filing of all tax returns related to such allocation, and will promptly advise each other regarding the existence of any tax audit, controversy or litigation related to such allocation.

2. **EMPLOYMENT MATTERS**

2.1 **Employment of Seller's Employees.**

- (a) Subject to compliance with applicable Law, beginning on the date hereof Seller shall use its commercially reasonable efforts to provide Buyer access to each Seller Employee and shall cooperate with Buyer to communicate to the Seller Employees the details of the proposed terms and conditions of their employment with Buyer.
- (b) Subject to compliance with applicable Law, including all applicable privacy laws, beginning on the date hereof and upon Buyer's reasonable request, Seller shall provide Buyer information and access to Seller Employees and books and records with respect to the employment terms and conditions of Seller Employees.
- (c) This Agreement is not intended to, and does not, create any rights or obligations to or for the benefit of anyone other than Buyer and Seller.

2.2 **Release and Indemnification.**

Notwithstanding any provision of this Agreement, Seller shall remain responsible, and shall indemnify and hold harmless Buyer, for any and all liabilities, obligations, commitments, costs, damages, losses, claims and expenses (including without limitation, reasonable attorneys' fees and expenses in connection with any action, suit or proceeding brought against Buyer) ("**Losses**") related to or in respect of the claims of any Seller Employee relating to or arising in connection with any and all (i) workers' compensation benefits arising in connection with any occupational injury or disease, or (ii) any other employment-related matters arising in connection with an event or practice, in each case to the extent occurring or existing on or prior to the Closing Date. Buyer shall be responsible, and shall indemnify and hold harmless Seller, for any and all Losses related to or in respect of the claims of any Seller Employee that becomes an employee of Buyer relating to or arising in connection with

any and all (i) workers' compensation benefits arising in connection with any occupational injury or disease, or (ii) any other employment-related matters arising in connection with an event or practice, in each case to the extent occurring or existing after the Closing Date.

2.3 **Assignment and Assumption of Plans.**

Seller maintains that certain TMT Observatory Corporation Voluntary Tax-Deferred Annuity Program and that certain TMT Observatory Corporation Defined Contribution Retirement Plan (each, a "**Plan**", and together, the "**Plans**"). The Plans were each amended and restated on January 1, 2009, and subsequently amended on December 22, 2010. As a material condition of this Agreement, effective as of the Closing Date Buyer assumes and agrees to be bound by all of Seller's obligations under the Plans, and Seller shall have no further obligations with respect to the Plans. Buyer further agrees to perform all obligations as plan sponsor of the Plans and to take any and all actions necessary to implement, maintain, and administer the Plans in accordance with applicable state and federal laws upon assumption of the Plans.

2.4 **Seller's Representations and Warranties Related to the Plans.**

(a) **Validity, etc.**

To Seller's actual knowledge, each of the Plans is valid and binding and is in full force and effect, and Seller is not in material breach under the terms of, and has not provided any notice of any intention to terminate or modify, any such Plan, except (i) as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity (regardless of whether considered in proceeding at law or in equity) or (ii) where the failure to be legal, valid, binding or enforceable could not, individually or in the aggregate, be or reasonably be expected to be material.

(b) **No Consent Required.**

To Seller's actual knowledge, no consent of any third party is required under any Plan as a result of or in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby, other than where the failure to obtain such consent could not reasonably be expected to have, individually or in the aggregate, a material effect. Complete copies of (i) each Plan (including all modifications and amendments thereto and waivers thereunder) and (ii) all form contracts, agreements or instruments used in and material to the administration of each Plan have been made available to Buyer.

(c) **Liability; Compliance.**

(i) Neither of the Plans are (i) a "multiemployer plan" (within the meaning of Section 3(37) of ERISA), (ii) a "multiple employer plan" (within the meaning of Section 413(c) of the Code), or (iii) a single employer plan or other pension plan subject to Title IV or Section 302 of ERISA or Section 412 of the Code.

(ii) Each Plan meets the requirements of Code Section 403(b).

- (iii) Each Plan has been operated in all material respects in accordance with its terms and in compliance in all material respects with the Code, ERISA, and applicable Law.
- (iv) Except as would not reasonably be expected to become a liability of Buyer or its Affiliates, to Seller's actual knowledge no Seller Benefit Plan exists that, as a result of this Agreement or the transactions contemplated hereby, alone or together with any other event, could reasonably be expected to (i) result in severance pay or any increase in severance pay to any Seller Employee, (ii) accelerate the time of payment or vesting or result in any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable under, or result in any other material obligation pursuant to, any Seller Benefit Plan in respect of any Seller Employee, (iii) result in the creation or imposition of any Lien on any Asset, or (iv) result in any payment (whether in cash or property or the vesting of property) to any "disqualified individual" (as such term is defined in Treasury Regulation Section 1.280G-1) that could reasonably be construed, individually or in combination with any other such payment, to constitute an "excess parachute payment" (as defined in Section 280G(b)(1) of the Code).

2.5 **Buyer's Authority to Sponsor Plans.**

Buyer represents and warrants that it has full power and authority to sponsor and maintain the Plans. Buyer represents and warrants that it is an employer described in Code section 501(c)(3) which is exempt from tax under Code section 501(a).

3. **REPRESENTATIONS AND WARRANTIES OF SELLER**

As of the date hereof and as of the Closing Date, Seller represents and warrants to Buyer as follows:

3.1 **Status, Authorization, etc.**

Seller is a corporation duly organized, validly existing and in good standing under the laws of California. Seller has the corporate power and authority to execute and deliver this Agreement, to perform fully its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by Seller of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized by all requisite corporate action of Seller. Seller has duly executed and delivered this Agreement. This Agreement is, and on the Closing Date will be, a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except (i) as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity (regardless of whether considered in proceeding at law or in equity) or (ii) where the failure to be legal, valid, binding or enforceable could not, individually or in the aggregate, be or reasonably be expected to be material.

3.2 **No Conflicts, etc.**

- (a) The execution, delivery and performance by Seller of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not (i) materially conflict with, contravene, result in a material violation or breach of (with or without the giving of notice or the lapse of time or both), give rise to a right or claim of termination, modification or vesting, or result in the creation of any Lien upon any of the Assets under any applicable Law, or (ii) conflict with, contravene, result in a violation or breach of (with or without the giving of notice or the lapse of time or both), give rise to a right or claim of termination, modification or vesting, or result in the creation of any Lien upon any of the Assets under the Organizational Documents of Seller.
- (b) No Governmental Approval or other Consent is required to be obtained or made by Seller or any of its Affiliates in connection with the execution and delivery of this Agreement or the consummation or performance of the transactions contemplated hereby, the failure of which to obtain or make could reasonably be expected to have, individually or in the aggregate, a material effect on the Assets or each of the Plans.

3.3 **Title to Assets.**

Seller has good and valid title to all of the Assets. Seller's title to the Assets is free and clear of any and all Liens save for such Liens as will be discharged on or before Closing. SELLER SELLS, ASSIGNS, TRANSFERS AND CONVEYS THE ASSETS TO BUYER "AS IS" AND "WHERE IS", WITH NO REPRESENTATIONS OR WARRANTIES AS TO MERCHANTABILITY, FITNESS OR USE.

3.4 **Employees, Labor Matters, etc.**

- (a) There are no collective bargaining agreements to which Seller is a party or by which Seller is bound with respect to any Seller Employees and there are no labor unions or other organizations or groups representing or purporting to represent or attempting to represent any Seller Employees.
- (b) (i) To the actual knowledge of Seller, there are no formal organizational campaigns, petitions or other material unionization activities seeking recognition of a bargaining unit related to the operations of the Seller, (ii) there are no strikes or work stoppages pending or, to the knowledge of Seller, threatened with respect to Seller Employees and (iii) no such strike or work stoppage has occurred within the three (3) years preceding the date of this Agreement. Seller is in compliance, in all material respects, with respect to Seller Employees, in all material respects with all applicable Laws respecting labor, employment, fair employment practices, terms and conditions of employment, workers' compensation, occupational safety and health requirements, employee and independent contractor classification, immigration matters, the WARN Act, the FLSA, employment discrimination, equal opportunity, employee leave issues and unemployment insurance and related matters.
- (c) No current or, to the actual knowledge of Seller, former Seller Employees are covered by non-competition agreements in place with respect to the Seller.

3.5 **EXCLUSIVITY OF REPRESENTATIONS.**

The representations and warranties of Seller set forth in Section 2 and this Section 3 are the only representations and warranties made by Seller with respect to the Assets or the Plans. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SPECIFICALLY SET FORTH IN SECTION 2 AND THIS SECTION 3, OR ANY CERTIFICATE DELIVERED UNDER THIS AGREEMENT, SELLER SPECIFICALLY DISCLAIMS AND MAKES NO REPRESENTATION, WARRANTY OR GUARANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER.

4. **REPRESENTATIONS AND WARRANTIES OF BUYER**

As of the date hereof and as of the Closing Date, Buyer represents and warrants to Seller as follows:

4.1 **Corporate Status; Authorization, etc.**

Buyer is a limited liability company, duly organized, validly existing and in good standing, under the laws of the jurisdiction of its organization with full corporate power and authority to execute and deliver this Agreement, to perform fully its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized by all requisite corporate action of Buyer. Buyer has duly executed and delivered this Agreement. This Agreement is a valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except (i) as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity (regardless of whether considered in proceeding at law or in equity) or (ii) where the failure to be legal, valid, binding or enforceable could not, individually or in the aggregate, be or reasonably be expected to be material.

4.2 **No Conflicts, etc.**

The execution, delivery and performance by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not conflict with or result in a violation of or under (with or without the giving of notice or the lapse of time, or both) (i) the Organizational Documents of Buyer, (ii) any Law applicable to Buyer or any of its Affiliates or any of their properties or assets or (iii) any contract, agreement or other instrument applicable to Buyer or any of its Affiliates or any of their properties or assets, except, in the case of clause (iii), for violations and defaults that, individually and in the aggregate, have not and will not materially impair the ability of Buyer to perform its obligations under this Agreement. No Governmental Approval or other Consent is required to be obtained or made by Buyer in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated thereby.

4.3 **EXCLUSIVITY OF REPRESENTATIONS.**

The representations and warranties of Buyer set forth in Section 2 and this Section 4 are the only representations and warranties made by Buyer. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SPECIFICALLY SET FORTH IN SECTION 2

AND THIS SECTION 4 OR ANY CERTIFICATE DELIVERED UNDER THIS AGREEMENT, BUYER SPECIFICALLY DISCLAIMS AND MAKES NO REPRESENTATION, WARRANTY, GUARANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER.

5. **COVENANTS**

5.1 **Covenants of Seller.**

(a) **Closing Date.**

From the date hereof until the Closing Date, Seller shall not:

- (i) Take any actions, or expressly permit any actions to be taken, which may result in a material impairment of the value of the Assets including, without limitation, the creation of any Liens which may affect the Assets.
- (ii) Take any actions, or expressly permit any actions to be taken, with respect to the Plans which would materially increase the Seller's obligations or materially decrease the Seller's rights, or materially increase the obligations of Buyer or materially decrease the rights of Buyer after assumption of such Plans, related to the Plans.

(b) **Further Assurances.**

Following the Closing, Seller shall from time to time execute and deliver such additional instruments, documents, conveyances or assurances and take such other actions as shall be necessary, or otherwise reasonably requested by Buyer, to confirm and assure the rights and obligations provided for in this Agreement and render effective the consummation of the transactions contemplated hereby.

5.2 **Covenants of Buyer.**

(a) **Further Actions.**

- (i) Buyer shall use its commercially reasonable efforts to take all actions and to do all things necessary, proper or advisable to consummate the transactions contemplated hereby by the Closing Date.
- (ii) Buyer shall, as promptly as practicable, file or supply, or cause to be filed or supplied, all applications, notifications and information required to be filed or supplied by Buyer pursuant to applicable Law in connection with this Agreement and the consummation of the transactions contemplated hereby.

(b) **Further Assurances.**

Following the Closing, Buyer shall, and shall cause its Affiliates, from time to time, to execute and deliver such additional instruments, documents, conveyances or assurances and take such other actions as shall be necessary, or otherwise reasonably requested by Seller, to confirm and assure the rights and obligations provided for in this Agreement and render effective the consummation of the transactions contemplated hereby.

(c) **Taxes.**

Buyer agrees to promptly pay all sales, transfer, use or other taxes, duties, claims or charges imposed on and/or related to the sale of the Assets to Buyer under this Agreement by any tax authority or other governmental agency and to defend, indemnify and hold Seller harmless from and against any such taxes, duties, claims, or charges for payment thereof by any tax authority or other governmental agency.

(d) **Waiver of Any Bulk Sales Obligations.**

Buyer hereby waives compliance by Seller with any applicable bulk sales requirements imposed by Law in connection with the transaction contemplated by this Agreement.

6. **CONDITIONS PRECEDENT**

6.1 **Conditions to Obligations of Each Party.**

The obligations of the parties to consummate the transactions contemplated hereby shall be subject to the fulfillment on or prior to the Closing Date of the following conditions:

(a) **No Injunction, etc.**

Consummation of the transactions contemplated hereby shall not have been restrained, enjoined or otherwise prohibited by any applicable Law, including any order, injunction, decree or judgment of any court or other Governmental Authority, and no proceeding challenging such transactions shall have been initiated. No court or other Governmental Authority shall have determined any applicable Law to make illegal the consummation of the transactions contemplated hereby, and no proceeding with respect to the application of any such applicable Law to such effect shall be pending.

(b) **Section 5913 of the California Corporations Code**

Twenty days shall have elapsed after Seller has given notice to the Attorney General of California under Section 5913 of the California Corporations Code and the Attorney General shall have taken no action to prevent the Closing or to impose any material conditions in relation to the Closing or the Attorney General has given the corporation a written waiver of Section 5913 as to the Closing.

6.2 **Conditions to Obligations of Buyer.**

The obligations of Buyer to consummate the transactions contemplated hereby shall be subject to the fulfillment (or waiver by Buyer) on or prior to the Closing Date of the following additional conditions:

(a) **Representations, Performance, etc.**

The representations and warranties of Seller contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty containing any materiality qualification) or in all material respects (in the case of any

representation or warranty without any materiality qualification), at and as of the date hereof and on and as of the Closing Date with the same effect as though made on and as of such date, except, in each case, where the failure of such representation or warranty to be true and correct, could not, individually or in the aggregate, reasonably be expected to be deemed material to the Assets or the Plans. Seller shall have duly performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

(b) **Related Agreements**

Each of (i) the Amended and Restated Contribution Agreement between Buyer and California Institute of Technology, (ii) the Amended and Restated Contribution Agreement between Buyer and The Regents of the University of California, and (iii) the Task Framework Agreement by and among Buyer, California Institute of Technology, and The Regents of the University of California shall have been executed by and delivered to each of the respective parties thereto and shall be effective as of the Closing Date.

(c) **Seller Employees.**

Each of the Seller Employees to which Buyer has made an offer of employment shall have accepted such offer.

(d) **Transfer Documents.**

Seller shall have executed and delivered to Buyer at or before the Closing all documents, certificates and agreements necessary to transfer to Buyer good and valid title to the Assets, free and clear of any and all Liens thereon.

6.3 **Conditions to Obligations of Seller.**

The obligation of Seller to consummate the transactions contemplated hereby shall be subject to the fulfillment (or waiver by Seller), on or prior to the Closing Date, of the following additional conditions:

(a) **Representations, Performance, etc.**

The representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty containing any materiality qualification) or in all material respects (in the case of any representation or warranty without any materiality qualification), at and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date, except, in each case, where the failure of such representation or warranty to be true and correct, could not, individually or in the aggregate, reasonably be expected to prevent or materially delay the performance by Buyer of its obligations hereunder or the consummation by Buyer of the transactions contemplated hereby. Buyer shall have duly performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date. Buyer shall have delivered to Seller a

certificate, dated as of the Closing Date and signed by its duly authorized officer, to the foregoing effect.

7. TERMINATION

7.1 Termination.

This Agreement may be terminated at any time prior to the Closing Date:

- (a) by the written agreement of Buyer and Seller;
- (b) by Buyer if there has been a material breach on the part of Seller of any representation, warranty, covenant or agreement of Seller set forth herein, which breach, if not a willful breach, has not been cured within forty-five (45) days; or
- (c) by Seller if there has been a material breach on the part of Buyer of any representation, warranty, covenant or agreement of Buyer set forth herein, which breach, if not a willful breach, has not been cured within forty-five (45) days.

7.2 Effect of Termination.

In the event of the termination of this Agreement pursuant to the provisions of Section 7.1, this Agreement shall become void and have no effect, without any liability to any Person in respect hereof or of the transactions contemplated hereby on the part of any party hereto, except as specified in Section 9.1 and except for any liability resulting from such party's breach of this Agreement.

8. DEFINITIONS

8.1 Definition of Certain Terms.

The terms defined in this Section 8.1, whenever used in this Agreement, shall have the respective meanings indicated below for all purposes of this Agreement.

"Affiliate" of a Person means a Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the first Person. **"Control"** (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise.

"Agreement" means this Asset Purchase Agreement, including the Schedules hereto.

"Article" has the meaning given to such term in Section 8.2.

"Assets" has the meaning given to such term in Section 1.1.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required to close.

"Buyer" has the meaning given to such term in the preamble of this Agreement.

“**Closing**” has the meaning given to such term in Section 1.3.

“**Closing Date**” has the meaning given to such term in Section 1.3.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Consent**” means any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, exemption or order of, registration, certificate, declaration or filing with, or report or notice to, any Person, including any Governmental Authority.

“**\$**” or “**dollars**” means lawful money of the United States of America.

“**Employee Benefit Plan**” means each written or oral employee benefit plan, scheme, program, policy, arrangement and contract (including, but not limited to, any “employee benefit plan,” as defined in Section 3(3) of ERISA, whether or not subject to ERISA, and any retirement, welfare benefit, fringe benefit, stock option or other equity-based compensation, bonus, sales or other incentive, supplemental retirement, deferred compensation, retiree health, life insurance, cafeteria, vacation, and any employment, consulting, non-competition, non-solicitation, tax gross-up, collective bargaining, termination, retention, change in control or severance plan, program, policy, arrangement or contract) that is maintained or contributed to by Seller or any of its Affiliates or any Person that is an ERISA Affiliate for the benefit of its or their current or former employees.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” means, with respect to any Person, any trade or business, whether or not incorporated, which together with such Person, is treated as a single employer under Section 414 of the Code.

“**Exhibit**” has the meaning given to such term in Section 8.2.

“**FLSA**” means the Fair Labor Standards Act, as amended.

“**Governmental Approval**” means any Consent of, with or to any Governmental Authority.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any governmental authority, agency, department, board, commission or instrumentality of the United States or a foreign nation or jurisdiction, any State of the United States or any political subdivision of any thereof, any court, tribunal or arbitrator, and any self-regulatory organization.

“**Law**” means any law, statute, ordinance, rule, regulation (including those promulgated by self-regulatory organizations with jurisdiction over a party), judgment, injunction, order or decree applicable to the Seller, the Assets or the Plans.

“**Lien**” means any mortgage, pledge, hypothecation, right of others, claim, security interest, encumbrance, lease, sublease, license, occupancy agreement, adverse claim or interest, easement, covenant, encroachment, burden, title defect, title retention agreement, voting trust agreement, interest, equity, option, lien, right of first refusal, charge or other restrictions

or limitations of any nature whatsoever, including but not limited to such as may arise under any contract.

"Losses" has the meaning given to such term in Section 2.2.

"Organizational Documents" means the certificate of incorporation and by-laws, certificate of formation and limited liability company agreement, partnership agreement or other organizational documents of an entity, and any side letters entered into in connection with any of the foregoing.

"Parties" has the meaning given to such term in the preamble of this Agreement.

"Person" means any natural person, firm, partnership, association, corporation, company, trust, business trust, Governmental Authority or other entity.

"Plan" or **"Plans"** have the meaning given to such terms in Section 2.1.

"Schedule" has the meaning given to such term in Section 8.2.

"Section" has the meaning given to such term in Section 8.2.

"Seller" has the meaning given to such term in the preamble of this Agreement.

"Seller Benefit Plans" means each Employee Benefit Plan that provides benefits or compensation in respect of any current or former Seller Employee (including, for avoidance of doubt, those Employee Benefit Plans that provide benefits or compensation in respect of the Seller Employees and employees of Seller and its Affiliates who are not Seller Employees).

"Seller Employee" means each employee of Seller including such individuals who are not actively at work due to an authorized leave of absence for vacation, holiday, illness, jury duty, bereavement leave, military leave, short-term or long-term disability leave, workers' compensation or other authorized leave of absence.

"WARN Act" means the Worker Adjustment and Retraining Notification Act, as amended.

8.2 Construction.

Unless the context otherwise requires, as used in this Agreement: (i) "or" is not exclusive; (ii) "including" and its variants mean "including, without limitation" and its variants; (iii) words defined in the singular have the parallel meaning in the plural and vice versa; (iv) words of one gender shall be construed to apply to each gender; (v) the terms "hereof", "herein", "hereby", "hereto", and derivative or similar words, refer to this entire Agreement, including the Schedules hereto; (vi) the terms "Article", "Section", "Exhibit" and "Schedule" refer to the specified Article, Section, Exhibit or Schedule of or to this Agreement; (vii) any grammatical form or variant of a term defined in this Agreement shall be construed to have a meaning corresponding to the definition of the term set forth herein; (viii) a reference to any Person includes such Person's successors and permitted assigns; and (ix) any reference to "days" means calendar days unless Business Days are expressly specified. If any action under this Agreement is required to be done or taken on a day that is not a Business Day, then such

action shall not be required to be done or taken on such day but on the first succeeding Business Day thereafter.

9. **MISCELLANEOUS**

9.1 **Expenses.**

Except as otherwise specifically provided in this Agreement, Seller, on the one hand, and Buyer, on the other hand, shall bear their respective expenses, costs and fees (including attorneys' and auditors' fees) in connection with the transactions contemplated hereby, including the preparation, execution and delivery of this Agreement and compliance herewith, whether or not the transactions contemplated hereby shall be consummated.

9.2 **Severability.**

If any provision of this Agreement, including any phrase, sentence, clause, Section or subsection, is inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever.

9.3 **Notices.**

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, (c) sent by next-day or overnight mail or delivery or (d) via e-mail to each e-mail address listed below for each party, and shall be given:

(a) if to Buyer, to

TMT International Observatory, LLC
100 West Walnut Street
Suite 300
Pasadena, CA 91124
Attn: Gary Sanders, Project Director
Email: sanders@tmt.org
with a copy to:

Hogan Lovells US LLP
875 Third Avenue
New York, New York 10022
Attn: Mike Matheou
Email: mike.matheou@hoganlovells.com

(b) if to Seller, to

TMT Observatory Corporation
100 West Walnut Street
Suite 300

Pasadena, CA 91124
Attn: David Goodman
Email: rgoodman@tmt.org

or, in each case, at such other address as may be specified in writing to the other parties hereto.

All such notices, requests, demands, waivers and other communications shall be deemed to have been received (w) if by personal delivery, on the day after such delivery, (x) if by certified or registered mail, on the third Business Day after the mailing thereof, or (y) if by next-day or overnight mail or delivery, on the day delivered.

9.4 **Miscellaneous.**

(a) **Headings.**

The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

(b) **Entire Agreement.**

This Agreement (including the Schedules hereto) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

(c) **Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

(d) **Arbitration.**

Any dispute, claim or controversy between Buyer and Seller arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined exclusively by arbitration in Los Angeles, California before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules. Judgment on an arbitration award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

(e) **Governing Law and Jurisdiction.**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without reference or regard to conflict of law or choice of law rules or principles. The Parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the first provision in this Section 9.4(e) with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16). Any action or proceeding by either

of the parties to enforce this Agreement, compel arbitration, enforce any arbitration award or for specific performance or other equitable relief shall be brought only in a state or federal court located in Los Angeles County, California. The parties hereby irrevocably submit to the exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.

(f) **Binding Effect.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(g) **Assignment.**

This Agreement shall not be assignable or otherwise transferable by either party hereto without the prior written consent of the other party hereto.

(h) **No Third Party Beneficiaries.**

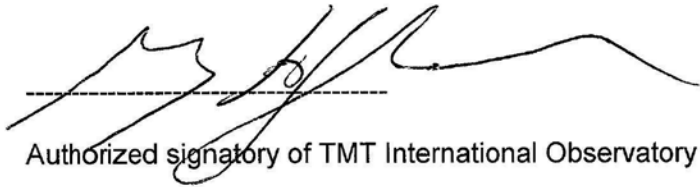
Nothing in this Agreement shall confer any rights upon any Person other than the parties hereto and their respective successors and permitted assigns.

(i) **Amendment; Waivers, etc.**

No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. Neither the waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

Signed by:

TMT International Observatory LLC

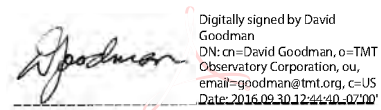


Authorized signatory of TMT International Observatory LLC

_____ *Gray Sanders*

Name of Authorized Signatory
of TMT International Observatory LLC (printed)

TMT Observatory Corporation



Digitally signed by David
Goodman
DN: cn=David Goodman, o=TMT
Observatory Corporation, ou,
email=goodman@tmt.org, c=US
Date: 2016.09.30 12:44:40 -0700

Authorized Signatory
of TMT Observatory Corporation

David Goodman

Name of Authorized Signatory
of TMT Observatory Corporation (printed)

SCHEDULE 1.1**ASSETS**

Asset Description
GigapixelCam
Global Safety Controller and Remote I/O unit 1
Local Safety Controller
2010 4 Runner
CCD SIM
PTC Software/ESD only - Creo Essentials
RESONANT, HIGH-Q ELECTRO-OPTIC PHASE MODULATOR MA. TUNABLE FREQ: MIN. 1.6-1.8 GHZ
DELL PRECISION T7600
RTC TESTBED
RSLogix 5000 Professional Edition Software
Workstation W4920XT-1-CL2
Workstation W4920XT-1-CL2
LABVIEW REALTIME COMPACTRIO DEVELOPMENT SYSTEM
CCD SIM
TMT Board Rm A/V Eq: 4(65")/HDX9004/Eagle Eye Camera/2(R-3650 Skrs)/8(CT550 Spkrs)
TMT North Conf Rm A/V Eq: 4(65")/HDX9004/Eagle Eye Camera/2(R-3650 Skrs)/ 8 (CT550 Spkrs)
TMT South Conf Rm A/V Eq: 4(65")/VSX8000/2(R-3650 Skrs)/ 8 (CT550 Spkrs)
Meeting Room 1 Audio Visual Unit
Copying Machine
BRIDGE, VIDEO CONFERENCING
Copying Machine
Project Mgr's Office (G. Sanders A/V Equipment)
TMT FOYER A/V EQPMT: 2(55")
CSI (A/V)
Meeting area 4 aw eqmpt
TMT North Conf Rm A/V Eq: 4(65")/HDX9004/Eagle Eye Camera/2(R-3650 Skrs)/ 8 (CT550 Spkrs)
TMT South Conf Rm A/V Eq: 4(65")/VSX8000/2(R-3650 Skrs)/ 8 (CT550 Spkrs)
System, Digital Image Motion Monitor (DIMM)
Analyzer, Four Channel Signal
SYSTEM, SPECTROPHOTOMETER W/ COMPUTER AND SOFTWARE
DISTANCE MEASURING INTERFEROMETER SYSTEM
TMT MIRROR FABRICATION VERTICAL SLIDE MECHANISM
Mobile Video Teleconferencing Unit
SITE TESTING DATA ARCHIVE SERVER
Site Testing Data Archive Server

Dell Precision 690
PLOTTER PRINTER
Digital Imaging Systems
Computer
Shack Hartmann Microlens Array
Shack Hartmann Microlens Array
Shack Hartmann Microlens Array
Shack Hartmann Microlens Array
Exposure 8' x 10' Backwall Display - Job Number 271-29

SCHEDULE 1.5**ALLOCATION**

Asset Description	Value of Consideration
GigapixelCam	\$11,725.83
Global Safety Controller and Remote I/O unit 1	\$10,698.25
Local Safety Controller	\$8,279.42
2010 4 Runner	\$7,675.73
CCD SIM	\$7,128.60
PTC Software/ESD only - Creo Essentials	\$5,489.76
RESONANT, HIGH-Q ELECTRO-OPTIC PHASE MODULATOR MA. TUNABLE FREQ: MIN. 1.6-1.8 GHZ	\$3,348.05
DELL PRECISION T7600	\$2,877.57
RTC TESTBED	\$1,690.75
RSLogix 5000 Professional Edition Software	\$1,514.01
Workstation W4920XT-1-CL2	\$1,421.45
Workstation W4920XT-1-CL2	\$1,299.69
LABVIEW REALTIME COMPACTRIO DEVELOPMENT SYSTEM	\$1,168.73
CCD SIM	\$762.20
TMT Board Rm A/V Eq: 4(65")/HDX9004/Eagle Eye Camera/2(R-3650 Skrs)/8(CT550 Spkrs)	\$11,700.81
TMT North Conf Rm A/V Eq: 4(65")/HDX9004/Eagle Eye Camera/2(R-3650 Skrs)/ 8 (CT550 Spkrs)	\$7,082.99
TMT South Conf Rm A/V Eq: 4(65")/VSX8000/2(R-3650 Skrs)/ 8 (CT550 Spkrs)	\$7,082.99
Meeting Room 1 Audio Visual Unit	\$5,007.81
Copying Machine	\$1,734.84
BRIDGE, VIDEO CONFERENCING	\$2,696.59
Copying Machine	\$1,255.84
Project Mgr's Office (G. Sanders A/V Equipment)	\$869.77
TMT FOYER A/V EQPMT: 2(55")	\$734.92
CSI (A/V)	\$656.55
Meeting area 4 aw eqmpt	\$627.89
TMT North Conf Rm A/V Eq: 4(65")/HDX9004/Eagle Eye Camera/2(R-3650 Skrs)/ 8 (CT550 Spkrs)	\$1,495.91
TMT South Conf Rm A/V Eq: 4(65")/VSX8000/2(R-3650 Skrs)/ 8 (CT550 Spkrs)	\$1,495.91
System, Digital Image Motion Monitor (DIMM)	\$16,540.56
Analyzer, Four Channel Signal	\$890.46
SYSTEM, SPECTROPHOTOMETER W/ COMPUTER AND SOFTWARE	\$7,153.24
DISTANCE MEASURING INTERFEROMETER SYSTEM	\$3,862.06
TMT MIRROR FABRICATION VERTICAL SLIDE MECHANISM	\$2,084.03

Mobile Video Teleconferencing Unit	\$851.77
SITE TESTING DATA ARCHIVE SERVER	\$1,903.57
Site Testing Data Archive Server	\$640.58
Dell Precision 690	\$567.19
PLOTTER PRINTER	\$662.02
Digital Imaging Systems	\$1,339.85
Computer	\$2,487.06
Shack Hartmann Microlens Array	\$1,126.83
Shack Hartmann Microlens Array	\$1,126.83
Shack Hartmann Microlens Array	\$1,126.83
Shack Hartmann Microlens Array	\$1,126.83
Exposure 8' x 10' Backwall Display - Job Number 271-29	\$842.27
TOTAL	\$151,854.83

BILL OF SALE AND ASSIGNMENT AGREEMENT

This Bill of Sale and Assignment (this "Assignment"), dated as of September 30, 2020, is entered into by TMT Observatory Corporation, a California nonprofit public benefit corporation ("Assignor") and TMT International Observatory LLC, a Delaware limited liability company ("Assignee") and, collectively, the "Parties").

WHEREAS, Assignor was formed in 2003 by the California Institute of Technology ("Caltech") and the University of California ("UC") for the purpose of fostering astronomy through the building and operation of a thirty-meter telescope (the "TMT Project");

WHEREAS, Assignee was formed in May 2014 and is comprised of Caltech, UC, the National Institutes of Natural Sciences of Japan, the National Astronomical Observatories of the Chinese Academy of Sciences, the Department of Science and Technology of India, and the National Research Council of Canada;

WHEREAS, Assignee was formed, among other reasons, so that the voting power and telescope observing time could vary amongst its members proportionate to their respective contributions to the TMT Project;

WHEREAS, Assignee is the current owner of the TMT Project and is organized and operated to provide for the observation and collection of images and information from deep space to advance human knowledge of astronomy and the origins of the universe by and through the execution of the TMT Project, and the means and methods of advancing this purpose is for Assignee's members to, among other things, develop, design, finance, construct, commission, operate and decommission a next generation segmented mirror telescope and associated observatory;

WHEREAS, on or around June 12, 2014, the Hawaii Department of Health issued a National Pollutant Discharge Elimination System Permit No. HI S000431 (the "NPDES Permit") to Assignor;

WHEREAS, Assignor and Assignee previously entered into that Asset and Employee Transfer Agreement (the "Asset Purchase Agreement"), effective on or about October 1, 2016 (the "Effective Date"), pursuant to which Assignor transferred to Assignee substantially all of its assets and Assignee assumed substantially all of Assignor's liabilities in connection therewith, in each case in accordance with the terms of the Asset Purchase Agreement, and since that date Assignor has continued the business and operations related to the assets assigned by Assignee;

WHEREAS, the understanding of the Parties is that Assignee is serving as the successor-in-interest to the NPDES Permit that issued to Assignor, and Assignee has been acting in such capacity as pertains to the NPDES Permit since 2016;

WHEREAS, the Parties have determined that the NPDES Permit was mistakenly omitted from Schedule 1.1 of the Asset Purchase Agreement, which sets forth the assets to be transferred thereunder by Assignor, even though it was intended that substantially all of the operating assets related to the TMT Project be transferred to Assignee; and

WHEREAS, in accordance with the terms of the Asset Purchase Agreement and pursuant to the “further assurances” clause in Section 5.1(b) thereof, Assignor desires to confirm transfer and assignment of the NPDES Permit to Assignee effective as of the Effective Date.

NOW, THEREFORE, Assignor, in consideration of the premises, covenants and agreements contained herein and in the Asset Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agrees as follows:

1. Sale and Assignment of NPDES Permit. Assignor hereby, as of the Effective Date, irrevocably assigns, transfers, conveys and delivers to Assignee the NPDES Permit and all of Assignor’s rights, title and interest in the NPDES Permit. Notwithstanding anything to the contrary in the Asset Purchase Agreement, the Parties acknowledge and agree that Assignor assigns, transfers, conveys and delivers the NPDES Permit to Assignee (i) “as is” and “where is” with no representations or warranties as to merchantability, fitness or use and (ii) without any representation, warranty, guaranty, express or implied, as to any matter whatsoever. As consideration for assignment of the NPDES Permit, Assignee accepts all responsibility, coverage, and liability associated with the NPDES Permit effective as of the Effective Date and agrees to indemnify and hold Assignor harmless in connection with any matters arising from the same.

2. Further Assurances. At the sole cost and expense of Assignee, each of the Parties shall take all further actions necessary to effectuate the transactions contemplated hereby and to evidence the assignment and transfer of the NPDES Permit to Assignee, including to execute such further assignments or other documents as may be reasonably requested for the purpose of giving effect to, or evidencing or giving notice of, the transfer contemplated by this Assignment.

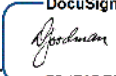
3. Governing Law. This Assignment shall be governed by, and interpreted in accordance with, the laws of the State of California, without reference or regard to conflict of law or choice of law rules or principles.

[Signature Page Follows]

IN WITNESS WHEREOF, each of Assignor and Assignee has caused this Bill of Sale and Assignment to be duly executed effective as of the Effective Date.

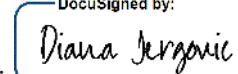
ASSIGNOR:

TMT OBSERVATORY CORPORATION

DocuSigned by:

By: 7B472DEB84584A8.....
Name: David Goodman
Title: Chief Operating Officer and Treasurer

ASSIGNEE:

TMT INTERNATIONAL OBSERVATORY LLC

DocuSigned by:

By: 20CB6D3F10D448E.....
Name: Diana Jergovic
Title: Board Secretary



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Activists pledge more protests as Thirty Meter Telescope construction given green light to proceed



By HNN Staff

Published: Jun. 21, 2019 at 7:55 AM HST



HONOLULU, Hawaii (HawaiiNewsNow) - Activists say hundreds are planning to protest Mauna Kea construction when it begins, and they say they're ready to be arrested if that's what it takes.

EXHIBIT "H"

Exhibit H
Flores-Case Ohana Memorandum



Officers arrested Kahookahi Kanuha on Thursday morning atop Mauna Kea in an apparent sign that construction of the TMT project is ramping up. (Image: Jennifer Ruggles)

“I just don’t think anyone is going to budge and they are probably going to have to use force,” said Healani Sonoda-Pale, of Ka Lahui Hawaii Political Action Committee.

The statements came after multiple law enforcement agencies headed up to Mauna Kea early Thursday morning to dismantle structures and shrines built by Native Hawaiian activists, clearing the way for construction crews. One protester was arrested on the mountain.

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The state operation happened a day after the state issued the Thirty Meter Telescope project a “notice to proceed” with construction, a decade after the \$2 billion telescope was first announced.

In a news conference, Gov. David Ige said construction of the project is set to begin “sometime this summer,” but no actual kick-off date has been released.

[Read more: [Construction of Thirty Meter Telescope expected to take 10 years to complete](#)]

Ige said that’s because the start date is still being hammered out. “We will proceed in a way that respects the people and place and culture that make Hawaii unique,” he said.

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Exhibit H
Flores-Case Ohana Memorandum



Meanwhile, Big Island Mayor Harry Kim pledged to use county resources to keep protests peaceful.

"I would assume no different than any other time," he said. "This will be to keep the area safe of trespassers or demonstrators in their designated area and I understand that anywhere along Saddle Road is county jurisdiction."



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State Department of Land and Natural Resources officers arrived on Mauna Kea around 3 a.m. Thursday and split into groups, dismantling the structures. The road to the summit was also blocked.

Activist Kahookahi Kanuha was arrested during the operation and released Thursday afternoon.

He told Hawaii News Now that officers took him into custody because "I simply wanted to be able to record and document what they were gonna do and how they were gonna do."

Kanuha said he wanted to record "so that we can show the world exactly what the state of Hawaii thinks about Hawaiians and how they treat them, how they treat our culture, and how they treat our spiritual beliefs and practices, which is basically to treat it like a bulldozer and just ram through all of it."

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The structures dismantled Thursday included one that had been built across the street from the Mauna Kea Visitor's Center in the early days of the protest encampment in 2015, following blockade arrests.

Activist Billy Freitas was at the scene Thursday and said 20 to 30 officers accompanied by state workers took the structure down and trucked it away.

"They posted a sign that says 'notice of disposition of abandoned or seized property,'" he said. "It was never abandoned, we have personal things in there."

Exhibit H
Hires-Case Ohana Memorandum



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Demonstrators say that structure went up several months ago.

There were also two ahu, or shrines, at Mauna Kea's summit that were dismantled. Activists said the shrines were built for religious purposes, and they consider the state's actions desecration.

Attorney General Clare Connors said the shrines and structures were taken down "very carefully," and will be stored for pick up.

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HAWAII'S CENTER.

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She also told reporters Thursday that the state wants to protect everyone's rights, including those of protesters and construction workers.

"There is a difference of course between lawful speech and unlawful conduct," she said. "When construction proceeds, the individuals working on Mauna Kea are going to need safe access."



Exhibit H Flores-Case Ohana Memorandum



In a statement, TMT International Observatory board of governors Chairman Henry Yang said he was pleased that the state had issued the "notice to proceed" and formulated a plan for ensuring construction workers can get to the summit.

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Advertisement for 2021 Christmas Ornaments and Friends of Honolulu City Lights, sponsored by Hawaiian Electric. Includes a "Get the official Shaka Santa" banner and an "Order Here" button.

"We remain committed to being good stewards of Mauna Kea, and to honoring and respecting the culture and traditions of Hawaii," he said.

"It has been a long process to get to this point. We are deeply grateful to our many friends and community supporters for their advice and for their encouragement and support of the TMT project over the years."

Instagram post by lanakilamanguil (8,839 followers) showing construction workers at a site. The post has 123 likes and a caption that reads: "Hale'oKukia'imauna has been destroyed! view all 23 comments".

Exhibit H Flores-Case Ohana Memorandum

Add a comment...



The timing came nearly a decade after the project was first announced as part of a new class of very large telescopes designed to spy farther into space and millions of years back in time, to when the first stars and galaxies were formed in the universe.

But opposition to TMT was immediate — and remains strong, raising questions about whether future protests might block construction vehicles seeking access to the mountain.

That's what happened in 2015, when many activists were arrested while blocking construction crews from what they considered a sacred Native Hawaiian space.

This story will be updated.

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Index to Contested Case HA-22-02 regarding the petition of Mauna Kea Hui for a Declaratory Order filed May 24, 2021

All files are available online at dlnr.hawaii.gov/occl/tmt, Table 3, "2021 Petition"

- 001 05-24-21 Mauna Kea Hui's motion to reopen hearing to hear motion for confirm non-compliance with condition no. 4, or, alternatively, petition for declaratory orders concerning the same; Memorandum in support of motion; Declaration of Clarence Kukaukahi Ching; Exhibits 01-07; COS
- 002 10-18-21 Request from the Law Office of Bianca Isaki for ruling or hearing on Mauna Kea Hui's motion to re-open hearing to hear motion to confirm non-compliance with condition no. 4, or, alternately, petition for declaratory orders concerning the same, filed May 24, 2021 in Docket No. BLNR CC-16-002.
- 003 10-20-21 Minute Order No. 1; Exhibit A; COS
- 004 10-31-21 Temple of Lono brief in response to petitioners' motion; COS
- 005 11-03-21 Cindy Freitas brief in response to petitioners' motion; COS
- 006 11-04-21 TMT International Observatory LLC's memorandum in opposition to Mauna Kea Hui's motion to reopen hearing to hear motion to confirm non-compliance with condition no. 4, or, alternatively, petition for declaratory order concerning the same; Declaration of Fengchuan Liu; Declaration of Counsel; Exhibits "A" – "C"; COS
- 007 11-04-21 University of Hawai'i at Hilo's substantive joinder to TMT International Observatory LLC's memorandum in opposition to Mauna Kea Hui's motion to reopen hearing to hear motion to confirm non-compliance with condition no. 4, or, alternatively, petition for declaratory orders concerning the same; COS
- 008 11-04-21 Perpetuating Unique Educational Opportunities' ("PUEO") substantive joinder to TMT International Observatory LLC's memorandum in opposition to Mauna Kea Hui's motion to reopen hearing to hear motion to confirm non-compliance with condition no. 4, or, alternatively, petition for declaratory orders concerning the same; COS
- 009 11-08-21 Flores-Case 'Ohana filing re State of Hawai'i Board of Land and Natural Resources failure to properly serve Minute Order No. 1 to the Flores-Case 'Ohana: Declaration of E. Kalani Flores; Exhibit A; COS
- 010 11-12-21 Mauna Kea Hui's reply to TMT International Observatory LLC's memorandum in opposition, University of Hawai'i at Hilo's substantive joinder to TMT International Observatory LLC's memorandum in opposition, and Perpetuating Unique Educational Opportunities' substantive joinder to TMT

- International Observatory LLC's memorandum in opposition; Declaration of Shelley Muneoka; Exhibits 08-10; COS
- 011 11-19-21 Minute Order 2; COS
- 012 12-03-21 Flores-Case Ohana memorandum in support of Mauna Kea Hui's motion to reopen hearing to hear motion to confirm non-compliance with Condition No. 4, or, alternatively, petition for declaratory orders concerning the same; Declaration of E. Kalani Flores; Exhibits A – H; COS
- 013 12-10-21 TMT International Observatory LLC's request to supplement record; Declaration of counsel; Exhibit A; COS
- 014 12-13-21 Mauna Kea Hui's memorandum in opposition to TMT International Observatory LLC's request to supplement the record; COS
- 015 06-06-22 Mauna Kea Hui's motion to submit new evidence, or alternatively, to request judicial notice of the same; Declaration of counsel; Exhibit A; COS
- 016 06-09-22 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; Declaration of counsel; Exhibit A; COS
- 017 06-09-22 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; COS
- 018 06-13-22 Perpetuating Unique Educational Opportunities' (PUEO) 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; COS
- 019 06-13-22 Perpetuating Unique Educational Opportunities' (PUEO) joinder to 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; COS
- 020 06-17-22 Flores / Flores-Case 'Ohana Memorandum in support of Mauna Kea Hui's motion to submit new evidence, or alternatively, to request judicial notice of the same; Declaration of E. Kalani Flores; Exhibits A-E; COS
- 021 02-23-23 Law Office of Bianca Isaki second request for ruling or hearing on Mauna Kea Hui's motion to re-open hearing to hear motion to confirm non-compliance with condition no. 4, or, alternately, petition for declaratory orders concerning the same, filed May 24, 2012 in Docket No. BLNR-CC-16-002
- 022 Minute Order 3, Exhibits A-G; COS

CERTIFICATE OF SERVICE

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

1. Minute Order No. 3, dated Jul 3, 2023

Was duly served upon the following parties, by email, on Jul 3, 2023

Julie China
julie.h.china@hawaii.gov
Deputy Attorney General
*Attorneys for the Board of Land
and Natural Resources*

Jesse K. Souki
Associate General Counsel
University of Hawai'i
souki@hawaii.edu
*Attorney for University of
Hawai'i, Hilo*

Lincoln S.T. Ashida
Newton J. Chu
Torkildson, Katz, Moore, &
Harris
lsa@torkildson.com
njc@torkildson.com
*Attorneys for Perpetuating
Unique Educational
Opportunities (PUEO)*

Richard Naiwieha Wurdeman
RNWurdeman@RNWLaw
Bianca Isaki
bianca.isaki@gmail.com
*Attorneys for the Mauna Kea
Hui*

Flores-Case 'Ohana
08ef80@gmail.com

J. Douglas Ing
Brian A. Kang
Ross Shinyama
Summer H. Kaiawe
Watanabe Ing LLP
douging@wik.com
bkang@wik.com
rshinyama@wik.com
skaiawe@wik.com
*Attorneys for TMT
International
Observatory, LLC*

Harry Fergerstrom
hankhawaiian@yahoo.com

Richard L DeLeon
kekaukike@msn.com

Mehana Kihoi
uhiwai@live.com

C. M. Kaho'okahi Kanuha
kahookahi@gmail.com

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

Cindy Freitas
hanahanai@hawaii.rr.com

Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
The Temple of Lono

Kalikolehua Kanaele
akulele@yahoo.com

Stephanie-Malia:Tabbada
s.tabbada@hawaiiantel.net

Tiffnie Kakalia
tiffniekakalia@gmail.com

Glen Kila
makakila@gmail.com

Dwight J. Vicente
dwrightjvicente@gmail.com

Brannon Kamahana Kealoha
brannonk@hawaii.edu

William Freitas
kukulukuula@gmail.com

J. Leina'ala Sleightholm
leina.ala.s808@gmail.com

S Michael Cain

Michael Cain
Custodian of Records
Board of Land and Natural Resources