



UNIVERSITY of HAWAII*at HILO
CENTER FOR MAUNAKEA
STEWARDSHIP

August 1, 2023

Dawn N. S. Chang
Chairperson
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawai'i 96813

SENT VIA EMAIL & US MAIL

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John Komeiji
Chairperson
Mauna Kea Stewardship and Oversight Authority
19 East Kawili Street
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SENT VIA EMAIL & US MAIL

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Dear Chairpersons Chang and Komeiji:

We know there is a tremendous amount of work ahead to transition responsibilities on Maunakea from the University of Hawai'i ("**University**" or "**UH**") to the Mauna Kea Stewardship and Oversight Authority ("**MKSOA**"). All of us must collaborate to make this happen.

Per 2022 Hawai'i Session Laws Act 255 ("**Act 255**"), codified in substantial part under Hawai'i Revised Statutes ("**HRS**") Chapter 195H, MKSOA now has the authority to act through its board as of July 1, 2023.¹ As part of our effort to support the transition called for in statute, we offer this comprehensive, but not exhaustive, outline of the many permits and agreements for which the MKSOA must assume responsibility. We also offer some initial thoughts about how this can be done. This approach strives for consistency with all existing state laws, including Act 255.

For your information, a similar letter was sent to Chairperson Suzanne Case, on May 30, 2022, before Act 255 was signed into law and the MKSOA was established.

¹ HRS § 195H-6.

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A. UNIVERSITY AGREEMENTS, PERMITS, AND ASSETS AFFECTED BY ACT 255

1. Real Property Agreements Granted to the University by the Board of Land and Natural Resources (“**BLNR**”) (collectively, “**UH Real Property Agreements**”):
 - General Lease No. S-5529 (Hale Pōhaku Mid-Level Facilities). Approximately 19.261 acres. Entered into on September 21, 1999, and expires on February 27, 2041.
 - General Lease No. S-4191 (Mauna Kea Scientific Reserve). Approximately 13,321.054 acres. Entered into on June 21, 1968, and expires on December 31, 2033. Amended by the Partial Withdrawal of approximately 2,033.2 acres for the Mauna Kea Ice Age Natural Area Reserve on March 23, 1998.
 - Grant of Easement No. 4697 (Roadway easement from Hale Pōhaku Mid-Level Facilities to the Summit of Mauna Kea). Approximately 70.798 acres. Entered into on September 8, 1981, and expires on December 31, 2033.
2. Nine (9) Subleases granted by the University to Mauna Kea observatories (“**MKO**”) and consented to by BLNR, under General Lease No. S-4191 (collectively, “**MKO Subleases**”):²
 - Canada-France-Hawai‘i Telescope (“**CFHT**”), 1975-Dec-18, Canada-France-Hawai‘i Telescope Corporation
 - Caltech Submillimeter Observatory (“**CSO**”), 1983-Dec-20, California Institute of Technology Corporation
 - Gemini North (“**Gemini**”), 1994-Sep-26, National Science Foundation
 - Subaru Telescope (“**Subaru**”), 1992-Jun-05, National Astronomical Observatory of Japan
 - Smithsonian Submillimeter Array (“**SMA**”), 1995-May-15, Smithsonian Astrophysical Observatory
 - Thirty Meter Telescope (“**TMT**”), 2014-Jul-28, TMT International Observatory LLC
 - NASA Infrared Telescope Facility (“**IRTF**”), 1974-Nov-29, National Aeronautics and Space Administration
 - Very Long Base Array (“**VLBA**”), 1990-Sep-28, Associated Universities, Inc.
 - W. M. Keck Observatory (“**Keck**”), 1985-Oct-30, California Institute of Technology Corporation

² The United Kingdom Infrared Telescope (“**UKIRT**”) and James Clark Maxwell Telescope (“**JCMT**”) subleases were terminated and improvements thereon transferred to the University on October 31, 2014 and February 28, 2015, respectively.

3. Eighteen (18) Conservation District Use Permits (“**CDUP**”) granted to the University by BLNR and posted on the department’s website at <https://dlnr.hawaii.gov/occl/maunakea-management>:
 - a. CDUPs related to Improvements Owned by Private Entities (“**MKO CDUPs**”).
 - CFHT, 1974-May-24, CDUP 0527
 - CSO, 1982-Nov-17, CDUP 1492³
 - Gemini, 1994-Apr-12, CDUP 2691
 - Subaru, 1991-Sep-27, CDUP 2462
 - SMA, 1994-Nov-18, CDUP 2728
 - TMT, 2017-Sep-28, CDUP 3568
 - IRTF, 1975-Aug-29, CDUP 0653⁴
 - VLBA, 1989-Jan-13, CDUP 2174
 - Keck I (includes temporary use of concrete batch plant and expansion of Hale Pōhaku), 1984-Aug-24, CDUP 1646
 - Keck II, 1992-Apr-10, CDUP 2509
 - b. CDUPs related to Mauna Kea Access Road and Improvements Owned by the University (“**UH CDUPs**”).
 - Hōkū Ke‘a Observatory Decommissioning Project, 2023-April-14, HA-3906⁵
 - Air Force Telescope, Planetary Patrol Telescope, 2.2-Meter Telescope (“**UH 88**”), 1977-Sep-9, CDUP 0954⁶
 - JCMT, 1983-Feb-25, CDUP 1515
 - UKIRT, 1975-Aug-29, CDUP 0653⁷
 - UKIRT dormitory at Hale Pōhaku, 1976-May-14, CDUP 0781

³ BLNR issued CDUP 3880 to the California Institute of Technology (“**Caltech**”) for the decommissioning of CSO on January 18, 2022. Since this was issued to Caltech directly, Caltech is directly and solely responsible for compliance with CDUP 3880, not UH.

⁴ CDUP 0653 was granted for both IRTF and UKIRT; the University will seek partial release from this permit to the extent that UKIRT is owned by the University and IRTF is privately owned.

⁵ This CDUP was approved by BLNR on April 14, 2023, and affirmed by letter from the Department of Land and Natural Resources (“**DLNR**”) Office of Coastal and Conservation Lands (“**OCCL**”) to UH on Apr 18, 2023; however, it was not posted with the collection of CDUPs listed on DLNR’s above-cited website collection, as of the date of this letter.

⁶ The Planetary Patrol telescope is no longer on Mauna Kea; it was dismantled in the 1990s to make room for the Gemini North telescope. Hōkū Ke‘a site was built by the U.S. Air Force in 1970 and was one of the first observatories on Mauna Kea before it was given to the University of Hawai‘i at Hilo; it is currently being decommissioned. *See*, n. 5, *supra*.

⁷ *See* n.2, *supra*.

- Hale Pōhaku Mid-Level Facilities and Visitor Center (“**Mid-Level Facilities**”), 1982-Apr-23, CDUP 1430
- Hale Pōhaku dormitories, 1977-May-13, CDUP 0895
- Hale Pōhaku subdivision and construction workers camp, 1986-Feb-14, CDUP 1819
- Infrastructure Improvements to Maunakea Visitor Center, 2018-Jun-8, CDUP 3812
- Mauna Kea Access Road, 1974-Jun-14, CDUP 0537

In addition to the above, the University also holds over 20 permits and approvals issued under Hawai‘i Administrative Rules (“**HAR**”) Chapter 13-5 for uses within the conservation district. Many of the conditions of approval imposed under these permits and approvals are ongoing commitments under the 2009 Mauna Kea Comprehensive Management Plan (“**CMP**”), updated by the “Comprehensive Management Plan 2022 Supplement,” approved by BLNR on July 22, 2022 (“**CMP Update**”).

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

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

B. APPLICABLE PROVISIONS OF ACT 255 AS CODIFIED IN PART BY HRS CHAPTER 195H

1. HRS § 195H-3, provides that MKSOA “shall serve jointly with the University of Hawaii in fulfilling the obligations and duties under the state lease[.]”
2. HRS § 195H-6(a) provides that MKSOA “shall jointly manage Mauna Kea lands with the University of Hawaii; provided that the authority's day-to-day operations shall be carried out by the center of Mauna Kea stewardship for the transition period[.]”
3. Part II, Section 7 of Act 255, which is not codified under the HRS, provides the following:
 - On “July 1, 2028, all rights, powers, functions, and duties of the University of Hawai‘i relating to the powers and responsibilities granted to the Mauna Kea stewardship and oversight authority...are transferred to the Mauna Kea stewardship and oversight authority.”
 - University leases “shall remain in full force and effect until its expiration unless otherwise specifically amended pursuant to an agreement by the

Mauna Kea stewardship and oversight authority and the University of Hawaii.”

- Regarding both UH Real Property Agreements and the CDUPs, on July 1, 2028, “the University of Hawaii shall be released from any and all obligations under the state lease...and any conservation district use application permits appertaining thereto, unless otherwise specifically agreed upon pursuant to an agreement by the Mauna Kea stewardship and oversight authority and the University of Hawaii[.]”⁸

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

Act 255 does not transfer UH Real Property Agreements or MKO CDUPs; consequently, UH is directly responsible as lessee, grantee, and permittee to BLNR during the transition period. For the MKSOA to have legal authority to act on land management decisions on Maunakea, the University will seek BLNR’s permission to enter into agreements to assign, transfer, and release from UH Real Property Agreements and MKO CDUPs. However, the University intends to retain its ownership, permits, and real property interests related to UH CDUPs and UH Assets, subject to whatever real property and permitting framework the MKSOA establishes for State of Hawai’i entities conducting research on Maunakea.

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

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

Act 255 assumes that UH Real Property Agreements become property owned and controlled by the MKSOA by legislative directive. However, in an abundance of caution, in the interest of public transparency, and to legally remove the University from further obligations, the University intends to present to BLNR a formal request for an assignment, transfer, and release from its UH Real Property Agreements. The University will retain its ownership interests in UH Assets and the right to remain on the site until the expiration of the UH Real Property Agreements. When existing UH Real Property Agreements expire, the University will negotiate with the MKSOA for a new lease or leases to continue operations and management of UH Assets.

⁸ Under HRS § 195H-2, “State lease” is defined to include “all leases and easements between the board of land and natural resources and the University of Hawaii pertaining to Mauna Kea that are in effect as of July 1, 2022[.]”

Upon assignment and transfer of UH Real Property Agreements, the MKSOA shall step into the shoes of the University and be responsible for all conditions, covenants, restrictions, and any and all terms under those agreements. BLNR shall release the University from all conditions, covenants, restrictions, and any and all terms under UH Real Property Agreements. Since the MKSOA will hold General Lease No. S-4191, under which MKO Subleases were granted, the MKSOA will be the successor in interest responsible for the MKO Subleases. This is consistent with the intent of Act 255.

2. Assignment, Transfer, and Release from MKO CDUPs

Act 255 suggests that the University will be released from all its CDUP obligations by legislative directive. However, this is inconsistent with HRS § 183C-6, which grants BLNR authority to “regulate land use in the conservation district by the issuance of permits.” To remain consistent with Act 255 and existing law, the University will formally request that BLNR assign, transfer, and release the University from its obligations under the MKO CDUPs.⁹

Upon transfer of the permits, the MKSOA will step into the University’s shoes and be responsible for all terms and conditions of the MKO CDUPs until July 1, 2028, when Act 255 provides that permitting authority will be with the MKSOA. It is not clear that Act 255 transfers conservation district authority to the MKSOA.¹⁰ But in an abundance of caution, the University will seek BLNR’s release from all terms and conditions of MKO CDUPs (approximately 162 conditions for MKO CDUPs and 139 for UH CDUPs listed in this letter). The University will work with the department on transferring and assigning MKO CDUPs and plan approvals issued by the department that may have continuing terms and conditions. After July 1, 2028, according to Section 7 of Act 255, UH CDUPs will also transfer to the MKSOA or, as provided under footnote 10 of this letter, UH CDUPs will no longer exist and the University will seek new permits from the MKSOA.

In the alternative, pursuant to HAR § 13-5-42(a)(2), BLNR or DLNR could provide the University with a written release from all terms and conditions of each CDUP identified herein, by recognizing the MKSOA as a “successor and assign.” As such, the CDUPs listed herein would transfer to the MKSOA who would become the permittee. We defer on whether this would require a BLNR or DLNR action.¹¹

⁹ HRS chapter 13-5, does not explicitly provide a procedure for the transfer and assignment of CDUPs.

¹⁰ HRS § 195H-7(b) provides, the MKSOA “***shall carry out the powers and duties otherwise conferred upon the board of land and natural resources*** pursuant to chapter 171, and the land use commission pursuant to chapter 205, with regard to permits, dispositions, land use approvals, ***and any other approvals pertaining to the Mauna Kea lands.***” (Emphasis added.)

¹¹ Our understanding is that DLNR-OCCL has taken the position that CDUPs run with the land; therefore, permits transfer by operation of law to the new owner. This is not provided for in HRS Chapter 183C, HAR Chapter 13-5, or by the terms of the CDUP. Consequently, UH respectfully requests a written release as discussed.

As it relates to the CDUPs, the University understands that the obligations under the approximately 103 management actions in the CMP, as amended by the CMP Update, approved by BLNR, along with its subplans, will become the responsibility of the MKSOA as the holder of the astronomy facility CDUPs.¹²

D. OTHER TRANSITION MATTERS RELATED TO STEWARDSHIP

HRS §195H-6(f), provides that “until the expiration of the transition period, no new lease shall be issued and no existing lease shall be renewed involving any Mauna Kea lands[.]” Consequently, UH has discontinued its pursuit of a new lease from BLNR and all sublease negotiations with the current MKOs have also been discontinued. UH will continue following through with its obligations under the UH Real Property Agreements and CDUPs, including decommissioning required under CDUP 3568. To that end, UH will complete its oversight of the Caltech Submillimeter Observatory decommissioning, and complete the UH decommissioning of Hōkū Ke‘a. UH will also pursue the requirement to identify three additional observatories for decommissioning as required under CDUP 3568 Special Condition Nos. 10 and 11, in accordance with the process outlined in the 2022 Master Plan adopted by the University Board of Regents.¹³

Part IV, sections 11 and 18, of Act 255 repeals, among other things, HRS § 304A-1903 on July 1, 2028. HRS § 304A-1903 grants UH authority to adopt rules to regulate public and commercial activities on Mauna Kea lands (i.e., lands described under the UH Real Property Agreements). HAR Chapter 20-26 (“**MK Rules**”) was adopted by UH under this authority. Consequently, UH will continue to enforce MK Rules during the transition period, but will seek to repeal the MK Rules on July 1, 2028, under the procedures prescribed by HRS § 91-3.

In conclusion, the technical path set forth in this letter is intended to provide the MKSOA with the rights it needs, consistent with Act 255, to accomplish its purpose: “fostering a mutual stewardship paradigm in which ecology, the environment, natural resources, cultural practices, education, and science are in balance and synergy.” The University will continue to collaborate

¹² The CMP Update identifies 15 completed, 14 completed/ongoing, and 74 ongoing management actions.

¹³ Special Condition Nos. 10 and 11 of CDUP 3568 provides as follows:

10. The University will decommission three telescopes permanently, as soon as reasonably possible, and no new observatories will be constructed on those sites. This commitment will be legally binding on the University and shall be included in any lease renewal or extension proposed by the University for Mauna Kea;

11. Notwithstanding any lease renewal or extension, consistent with the Decommissioning Plan, at least two additional facilities will be permanently decommissioned by December 31, 2033, including the Very Long Baseline Array antenna and at least one additional observatory.

Chairpersons Chang and Komeiji

August 1, 2023

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with the MKSOA in fulfilling this objective, while respecting its new and expansive authority. Until the MKSOA agrees to take on the assignment of UH Real Property Agreements and CDUPs on or before July 1, 2028, whichever occurs sooner, UH will continue to comply with its conditions of approval as lessee, grantee, and permittee to BLNR. This activity includes continued oversight over the MK Rangers, clearing the roads for public passage, implementing the MK Rules, decommissioning, and maintaining the operations at the Mid-Level Facilities which includes the Visitor Center.

If you have any questions or concerns regarding our proposed approach, please contact me at (808) 933-0734 or gchun711@hawaii.edu. We look forward to working with you and your team on a smooth transition of responsibilities to the MKSOA. Thank you for your attention to this matter.

Sincerely,

Gregory C Chun

Gregory Chun, Ph.D.
Executive Director

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