

J. Leina'ala Sleightholm
Pro Se
leinaala.mauna@gmail.com

**BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII**

In the Matter of:
A Contested Case Hearing Re.
Conservation District Use Application
HA-3568 for the Thirty Meter Telescope
At the Mauna Kea Science Reserve, Ka'ohe,
Hamakua District, Island of Hawai'i

Case No. BLNR-CC-16-002
J. LEINA'ALA SLEIGHTHOLM'S
EXCEPTIONS AND RESPONSES
TO HEARING OFFICER, HON.
RIKI MAY AMANO'S FINDINGS
OF FACTS, CONCLUSIONS OF
LAW AND DECISION AND
ORDER (Hearing Officer's Report)

**J. LEINA'ALA SLEIGHTHOLM'S EXCEPTIONS AND RESPONSES TO THE
HEARING OFFICER'S REPORT**

The University of Hawai'i at Hilo, an entity of the state of Hawai'i, (hereinafter referred to as "The University" or "Applicant"), filed an application for a Conservation District Use Permit, (hereinafter referred to as "CDUA"), on September 2, 2009, pursuant to Chapter 183C of the Hawai'i Revised Statutes, (hereinafter referred to as "HRS"), and Chapter 13-5 of the Hawai'i Administrative Rules, (hereinafter referred to as "HAR"), for the construction of a Thirty Meter Telescope, (hereinafter referred to as "TMT" or "Project"), on the northern plateau of the conservation district of Mauna Kea, (also referred to as the "Mauna Kea Science Reserve, Ka'ohe Mauka, Hamakua, Hawai'i, TMK (3) 4-4-015:009).

The Applicant and TIO have filed their joint proposed Findings of Fact, and Conclusion of Law. (DOC-671) (The University of Hawai'i at Hilo and TMT International Observatory, LLC's joint Findings of Fact, Conclusions of Law, and Decision and Order). 1

The Applicant/TIO filed 1,014 separate findings of fact, and 482 separate conclusions of law. Id.

1 The Applicant and TIO filed joint proposed findings and conclusions. (DOC 671) Thus supporting the original challenge by various parties to the inclusion of TIO as a party in this proceeding. The University clearly represented the interests of TIO and TIO had no basis for independent standing.

The Hearing’s Officer provided two weeks in which to file responses. Minute Order, (hereinafter referred to as MO) 43 (Order setting post-hearing deadlines). (DOC-552)

J. Leina’ala Sleightholm comes now with her Exceptions and Responses to the Hearing Officer’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order denying CDUA HA-3568 for the Thirty Meter Telescope (TMT).

Due to the time constraints, and the immensity of the Hearing Officer’s Report, J. Leina’ala Sleightholm hereby incorporates by reference all filings, including the Exceptions and Responses of Kealoha Pisciotta, Mauna Kea Anaina Hou, the Temple of Lono, William Freitas, Clarence Kukauakahi Ching, the Flores-Case ‘Ohana, KAHEA, Brannon Kamahana Kealoha, Harry Fergestrom, Cindy Freitas, and Mehana Kihoi.

In addition, due to her pro-se standing, and lack of knowledge as to proper format, any Exception that should in fact be a Response should be taken as a Response, and any Response that should in fact be an Exception should be taken as an Exception.

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EXCEPTIONS:

1) I take exception to and am very disappointment with regard to the HO’s Report in its entirety, which appears to be an exact copy of UH/TIO’s Joint Proposed FOF, COL, and Decisions and Order.

As a party in this case I know first hand how daunting, extensive, time consuming, and immense the record was, and we were given a very short amount of time to go through the thousands and thousand of pages of transcripts, and hours of video, but we did the best we could. Although my FOF/COL could have been more complete and thoughtful had we been given adequate time, we still, each, individually spent the hours necessary to prepare and submit the required document in a good way. The contested case process was setup to be for regular members of the community to be able to participate in a meaningful way and as a pro-se party it requires more time for me to

not only learn the format, if even possible with the deadlines, but also extract the relevant information necessary to present my case. I would have hoped that the Hearing's Officer presiding over this contested case would put as much thoughtfulness, and consideration into preparing this report as we put in, as an acknowledgement of our efforts as well.

2) I take exception to the fact that after submitting my FOF/COL I did not receive any official response as to whether my Findings were considered, accepted, or even denied.

PARTIES:

3) "Dwight Vicente is a native Hawaiian and holds himself out to be representing the Hawaiian Kingdom" (25 pg. 13)

I take exception to the tone used in this statement to describe Mr. Vicente. It conveys bias, and a mocking and demeaning representation of his legitimate standing in this case.

4) "Mr. Kealoha stopped appearing in person and participating in the proceedings on or about December 8, 2016" (26 pg. 13)

I take exception to the fact that it does not state the reason Mr. Kealoha "stopped" appearing. He made numerous objections, and voiced concern about the financial burden the hearings schedule had on him and his ability to continue in the process.

SITE VISIT:

5) "The hearings officer had a reasonable amount of time and conditions for viewing the general landscape and areas proposed for the TMT Project, and the site visit is considered reasonable and appropriate for the purpose of the case." (82 pg. 20)

I take exception the fact that the site visit was considered reasonable and appropriate when multiple parties' standing involved religious and cultural practices, yet on the day of the site visit, the van in which the HO, and other parties rode in made no stops at the site. They did not exit the van to experience the essence of the mountain, take the time to walk around the proposed site, or to take time to look at the red helium balloon which floated over 100 ft. in the air. Many parties stated that they either didn't see the balloon, or didn't have time to look at it for a reasonable period of time.

6) I take exception to the fact that after giving prior notice that riding in the tour vans on the day of the site visit was against my beliefs, and I couldn't ride in a vehicle which I do not support I had gotten no response but told on the day of the site visit that if I chose not to go with the group in the van, I would be excluded from the official site visit.

PROCEDURAL HISTORY:

7) I take exception to the fact that on April 19, 2017, MO 43 set a deadline for FOF/COLs to be submitted prior to ruling on all outstanding filings. The FOF/COL that the parties were ordered to submit was based on an incomplete record. The record was closed on July 25, 2017 (MO102) which was two months after the deadline to submit our FOF/COL.

8) I take exception to the fact that responses to many outstanding filings came so late that they were no longer an issue. Example: (MO 69) dated June 5, 2017, granting my motion to appear by phone which I had submitted on January 26, 2017 for a mandatory scheduling hearing.

FINDINGS OF FACT:

9) I take exception to the fact that the Office of Mauna Kea Management, (hereinafter referred to as “OMKM”) is represented or portrayed to have authoritative powers, but in fact they are merely an advisory board who makes recommendations.. They do not have the power to create regulations or enforce them.

10) I take exception to the numerous “Management Plans” i.e., CMP, CRMP, NRMP, asserting that their function is to protect and preserve a myriad of aspects on Mauna Kea, when in fact they were created by the entity who poses the largest threat and impact to the mountain.

11) I take exception to the term, “restoration or restore” used when referring to post decommissioning. Unless every pohaku, piece of cinder, and particle of dirt is put back in the exact place and manner in which it was when it was disturbed, a place can never truly be restored back to it’s original state. The aforementioned only relates to the physical materials, but the energetic aspect, and sanctity, of a site cannot be restored once desecrated.

12) I take exception to one of the reasons stated that the site for the proposed TMT on the northern extension of the summit was to ensure that the TMT project would not be visible from Hilo somehow minimizes the visual impacts or detracts from the fact that other parts of the island will see it. (179 pg. 38)

13) I take exception to the statement, “balancing the competing interests of culture, conservation, scientific research, and recreation.” (194 pg. 41)

Our very existence as Hawaiians is inclusive “culture” which encompasses many aspects and in no way is in competition with anything. We are merely being who we were born to be, our birthright. The terminology being used is the western way of thinking, and the idea that our

“practices” are somehow in competition with any of the other listed “interests” is false. It should not have even been included or entertained as such.

14) I take exception the statement that, “Rangers remove fireweed when they find it along the road and summit areas”. (197 pg. 41)

A more accurate statement would have been that rangers “sometimes” remove fireweed when they find it along the road and summit areas. I have seen rangers standing next to multiple patches of fireweed and they did not remove them. In fact, during the 24/7 vigil held across the VIS, many of the “protectors” consistently pulled fireweed, bagged it, and disposed of it while the rangers stood, arms crossed along the side of the road.

15) I take exception to the statement made by Dr. Coleman, “The TMT project will allow the University to continue its astronomy outreach and teaching efforts, and aid in the quest to produce “home grown” astronomers” (302 pg. 61)

Our people are seafaring people who navigate using the stars. This has been so for hundreds of years before there ever was a University or astronomy course. We have many home grown astronomers, and the importance of a degree to somehow make you qualified is not the only way, or means to measure knowledge. My son who grew up sailing on the Makali’i knows the stars, and constellations like the back of his hand, and this he learned through oral teachings, and by living and practicing the teachings not by acquiring a degree through theoretical teachings.

16) I take exception to the idea that money is somehow a mitigation. It is presented in such a way that if offered the right amount of money, desecration would be acceptable. The analogy used by one of the parties was if you disturbed a certain type of plant, the mitigation would be planting more of that plant in another area. Money doesn’t mitigate the impacts of a project that will disturb 12.5 acres on various parts of the mountain, all of which hold significant cultural and spiritual importance.

17) I take exception to the idea that only certain areas are significant or sacred. Energetically, everything is connected. You cannot only look at one area, or “find spot” alone.

18) I take exception to the statement, “The TMT project will camouflage certain HELCO electrical pull-boxes and other utility boxes that are visually distracting or intrusive at the summit of Mauna Kea”. (328 pg. 67)

A telescope that stands 184 ft. tall is far greater of a distraction and intrusion than electrical pull-boxes or utility boxes.

19) I take exception to the idea or proposal that “site restoration may involve using cinder or materials similar to the surroundings” (350 pg. 72)

Materials removed from the proposed project area was planned to be stored at the batch plant for use in the “restoration” efforts. The possibility of disturbing other areas and removing materials similar to those of the project area from another site is not acceptable, and additional impacts should not be a consideration. Furthermore, the materials from one site should remain at that site as that is the area it has always been, and probably was formed/created and does not belong in another area.

20) I take exception to any statements made that the impacts will not add to the already substantial, adverse, and significant impacts, (509, 512 pg. 95) when it states that, “Some underground facilities may be left in place because removing them could cause more of a disturbance than leaving them”. (351 pg. 72)

If a man made, foreign material is left in the ground where previously none was there, it adds to the impacts of the area.

21) I take exception to the idea that physical impacts are somehow viewed as lessened by a mitigation “plan”, applicable management, and decommissioning “plan”. (509 pg. 95)

22) I take exception to the assertion that, “the level of impacts on natural resources within the MKSR would be substantially the same even in the absence of the TMT project within the MKSR”. (512 pg. 95)

Entertaining the idea of leaving some underground facilities in place (351 pg. 72) is contradictory to the above statement.

23) I take exception to the fact that throughout this report, the endeavors, accolades and advancement of astronomy supersedes the voices of thousands of first nations people who are genealogically connected to Mauna Kea demanding that no further development take place on the summit, which is considered to be a portal to the realm of our ancestors.

24) I take exception to the fact that only physically visible features were considered when determining the concentration or locations of archaeological or historic sites/areas within the project area. (ii Archaeological and Historic Resources pg. 104-114)

It is known that many practices, i.e. burials, especially those of ali’i were held in secret. Just because the eye can’t see it, doesn’t mean it doesn’t exist. Same goes for other religious practice and offerings. Ho’okupu was not always in the form of material things. ‘Oli, mele, hula were other forms of ho’okupu that would not leave a physical presence but should be considered.

25) I take exception to the term “Traditional and Customary practices”. (iii Cultural Resources and Practices pg. 122)

It is a way in which to continue to be oppress, and subjugate native people by minimizing their practice and regulating it by means of terminology, when it was because of the introduction of Christianity, and indoctrination, and the making of our language and practices illegal that broke the continuity of knowledge passed down from generation to generation for some families. It is not to say that other branches of the family cannot pass that same knowledge down even after generations have passed, and it is still and should be acknowledged, as western terminology puts it, “traditional and customary practice” and not contemporary.

26) I take exception to the reference of the polls, and results of these polls. (795 pg. 145)

It should be noted that the above mentioned polls were initiated, and funded by TIO, and not all Hawaiians were surveyed.

27) I take exception to the statement, “Sleightholm has followed the principles of Petitioner Case, and both oppose the TMT project”. (805 pg. 153)

I have had many kumu in my lifetime. My conclusion regarding my stance with regard to Mauna Kea was made entirely on my own after having learning all the facts on both sides, receiving messages and signs from my kupuna, and connecting through pule the deep knowing of what is pono and in alignment with my beliefs and understanding the ways of my kupuna. I would have come to the same conclusion no matter who my kumu was at that time.

28) I take exception to the statement, “protest the TMT project”. (805 pg. 153)

I stand for the mauna. I stand to protect the mauna. I don't protest, but instead align myself with a higher level of consciousness in aloha. Protest implies a negative energy and both cannot occupy the same space at the same time.

29) I take exception to the argument that the visual impacts of TMT is less of an impact because it's one among many. (854 pg. 164)

Every incremental addition adds to the cumulative impact. It would be like saying about an abused woman, well one more bruise won't be bad because there are so many there already. Seeing the proposed TMT would be a constant and painful reminder that money, and privilege outweighs the values and beliefs of the people who were born of this place.

30) I take exception to the assertion that our chants are not evidence enough of facts. (867 pg.

167) Chants evolved based on observations over generations. It was our traditional way of documenting. I.e. the name Ka'ohē was given because that area was an area where water collected. It was factual and descriptive of the elemental occurrences.

31) I take exception to the reference regarding the “alleged” 2015 oil leak, and how they were likely moisture from condensation. (874 pg. 168)

The oil leaks (plural) were extensively documented by visual confirmation and photos. The amounts were large enough to pool and the dismissive way the leaks were addressed and noted in this report is further evidence of the management/mismanagement practices on Mauna Kea to date.

32) I take exception to the fact that it states, “the Hearing Officer, through consideration of the CDUA and through the testimony and evidence in this proceeding, conducted a thorough review and analysis of the extent to which traditional and customary native Hawaiian rights *will* be affected or impaired by the TMT project”. (344 pg. 242)

Based on numerous witness testimony, these rights have already been affected, and or impaired.

33) I take exception to the statement, “There is no evidence in this matter that an entity or “person” involved in this proceeding has the specific ill-intent to mistreat Mauna Kea through defacing, damaging or polluting the mountain through the development of the TMT project, and the Hearing Officer specifically finds that the University and TIO have no such intent”. (409 pg. 251)

It was confirmed that Mr. Ishibashi purposely kicked down an upright in the summit area. As an agent/employee of OMKM, an advisory board for the University, it shows clear intent to mistreat the mountain or site. (405, 406 pg. 251)

RESPONSES:

34) OMKM has repeatedly failed in its responsibility to properly manage the mountain. (141 pg. 30) Mayor Harry Kim acknowledged publicly that the mountain has been failed. OMKM’s actions thus far have been contradictory to their primary mission which states is the protection, preservation, and enhancement of cultural and natural resources in the UH Management Area on Mauna Kea.

35) Although it states that management efforts have evolved and developed significantly over the last 15 years under OMKM, and references the auditor’s report which says OMKM has addressed many of their recommendations such as developing and implementing management plans for Mauna Kea’s natural, cultural, and historic resources. (194 pg. 41) OMKM and Kahu Ku Mauna have yet to address numerous action items relating to cultural practices, and the West Hawai’i Consultation sessions to discuss these action items has been cancelled twice. First meeting scheduled for May 18, 2017 and second attempted meeting set for June 22, 2017 both cancelled and no notice from Lukela Ruddle as to a new meeting date. These action items were originally introduced and open for comment in May of 2015.

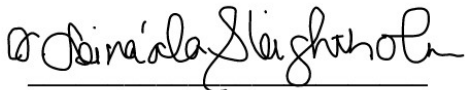
36) Nelson Ho's testimony citing "past issues" (199 pg. 41) was to give a timeline and show a pattern of mismanagement on Mauna Kea that spanned decades.

37) Affixing stones and cinders from the vicinity to the exposed utility box. (328 pg. 67) Is disrespectful and could be seen as desecration, and is not in alignment with the primary mission statement of OMKM to protect, preserve and enhance the cultural and natural resources.

38) The fact that Dr. Noe Goodyear-Kaopua has only been to the summit once is in alignment with the beliefs and practices of our kupuna. If they were allowed to go up, it was for very specific reasons, and intentions.

RECOMMENDED DECISION AND ORDER:

Based on the Exceptions and Responses provided above, and by my incorporation by reference all filings, FOF/COL, Decisions and Orders submitted by the aforementioned parties, it is ordered that CDUP should be denied.



J. Leina'ala Sleightholm
Waikoloa, Moku o Keawe

Dated: August 21, 2017

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

Contested Case Hearing Re Conservation
District Use Application (CDUA) HA-3568
for the Thirty Meter Telescope at the Mauna
Kea Science Reserve, Ka'ohē Mauka,
Hāmakua, Hawai'i, TMK (3) 4-4-015:009


DLNR File No. HA-CC 16-002 (CDUA
HA-3568)

J. Leina'ala Sleightholm, Statement to
Incorporate by Reference and join on to
Mauna Kea Anaina Hou and Ms
Pisciotta's Exceptions, and provide
Additional Exceptions.

STATEMENT TO INCORPORATE BY REFERENCE AND JOIN TO MAUNA KEA ANAINA HOU AND Ms. PSCIOTTA'S
EXCEPTIONS AND PROVIDE ADDITIONAL EXCEPTIONS

I **J. Leina'ala Sleightholm**, in the capacity of pro se, having previously agreed with Ms. Pisciotta and Mauna Ka Anaina Hou, respectfully incorporate by reference, and join on to, Mauna Kea Anaina Hou and Ms Pisciotta's Exceptions, and provide Additional Exceptions (if any). I also join and incorporated by reference all other Pro Se Petitioners/Parties.

Signed:


Name: J. Leina'ala Sleightholm

Date: August 20, 2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by the means indicated on the date noted below:

Michael Cain
dlnr.maunakea@hawaii.gov
michael.cain@hawaii.gov
Custodian of the Records

Carlsmith Ball LLP
isandison@carlsmith.com
jpm@carlsmith.com
lmcaneley@carlsmith.com
tluikwan@carlsmith.com
Counsels for the applicant University of Hawai'i at Hilo

Law Offices of Yuklin Aluli
yuklin@kailualaw.com
cdex@hotmail.com
Counsel for Kahea

Bianca Isaki
binca@kahea.org

Kealoha Pisciotta and Mauna Kea
Anaina Hou
keomaivg@gmail.com

Clarence Kukauakahi Ching
kahiwaL@cs.com

E. Kalani Flores
ekflores@hawaiiintel.net

B. Pualani Case
puacase@hawaiiintel.net

Deborah J. Ward
cordylinicolor@gmail.com

Paul K. Neves
kealiikea@yahoo.com

Patricia Ikeda
pehekeanila@gmail.com

Ivy Macinosh
3popoki@gmail.com

Maelani Lee
maelanilee@yahoo.com

WardWatanabe Ing LLP
rshinyama@wik.com
douging@wik.com
Counsels for TMT International Observatory, LLC

Harry Fergerstrom
P.O. Box 951
Kurtistown, HI 96760

Mehana Kihoi
uhiwai@live.com

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

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

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

J. Leina'ala Sleightholm
leinaala.mauna@gmail.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
Representative for 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
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

Brannon Kamahana Kealoha
brannonk@hawaii.edu

Cindy Freitas
hanahanai@hawaii.rr.com

William Freitas
pohaku7@yahoo.com

Wilma H. Holi
P. O. Box 368
Hanapepe, HI 96716
Witness for the Hearing Officer

Moses Kealamakia Jr.
mkealama@yahoo.com
Witness for the Hearing Officer

Signed: 
Name: J. Leina'ala Sleightholm
Date: August 20, 2017