

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, FEBRUARY 25, 2011
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Interim Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:08 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
David Goode
Jerry Edlao

Ron Agor
John Morgan
Rob Pacheco

STAFF

Sam Lemmo/OCCL
Paul Conry/DOFAW
Ed Underwood/DOBOR

Russell Tsuji/LAND
Ian Hirokawa/LAND
Francis Oishi/DAR

OTHERS

Pam Matsukawa, Deputy Attorney General
Perry White, K-1
Bob McLaren, K-1
Doug Simons, K-1
Roberta Chu, K-1
Jon Miyata, K-1
Noa Helela, K-1
Keali'iwawae Keli'ikoa, K-1
Glenn Ida, K-1
Randy Kurohara, K-1
Kelson Lau, K-1
Kealoha Pisciotta, K-1, K-2
Jonathan Osorio, K-1
Marti Townsend, K-1, K-2

President Marcie Greenwood, K-1
Barry Taniguchi, K-1
Representative Jerry Chang, K-1
Greg Chun, K-1
Jacqui Hoover, K-1
Dean Au, K-1
Hanaloa Helela, K-1
Barbara Hastings, K-1
Al Lardizabal, K-1
Clyde Hayashi, K-1
Richard Ha, K-1
Ross Wilson, K-1
Kalepa Babayan, K-1
Clarence Ku Ching, K-1

Dale Hollands, K-1
Kim Brendent, K-1
John Hamilton, K-1
Christian Blackshear-Anderson, K-1
Leon Peralta, K-1
Charlene Morika, K-1
Megan Na'au, K-1
Laulani Teale, K-1
Dennis, Niles, J-1

Miwa Tamanaha, K-1
Hanalei Fergustrom, K-1
Cha Atkins, K-1
Kehau Kimura, K-1
Celeste Hao, K-1
Wallace Ishibashi, K-1
Katherine Burke, K-1
Stephanie Nagata, K-1

{Note: language for deletion is [bracketed], new/added is underlined}

A number of written testimonies were received and distributed to the Board.

Item C-2 Request for Approval of Incidental Take License and Habitat Conservation Plan for Kauai Island Utility Cooperative, Island of Kauai

Item C-3 Request for Approval of Incidental Take License and Habitat Conservation Plan for the Construction of the Advanced Technology Solar Telescope at the Haleakala High Altitude Observatory Site, Maui, Hawaii

Chairperson Aila announced that Items C-2 and C-3 have been withdrawn.

Member Agor had concerns whether or not the applicants were notified not to come to this meeting. Per Deputy Attorney General Pam Matsukawa they were notified. Member Agor asked to move to defer. Ms. Matsukawa said not to and that this item will come back at a later date which is the same as a deferral and that she has been in touch with the KIUC attorney. Member Agor said KIUC and the people of Kauai are not okay with that. KIUC is owned by the people of Kauai and they are paying the bill. The short term plan is to gather data for the environmental assessment. If it's for an EIS or EA make a stipulation for the long term plan because by then they will have data gathered from the short term plan to complete the EA/EIS noting that you can't complete those without data. KIUC is being put in a no win position. They are not in compliance now and they have testimonies that KIUC should be fined for non-compliance and the same people are asking to have this delayed. He wanted an opportunity to convince his fellow Board members to move this on as soon as possible. Ms. Matsukawa suggested going into an Executive Session with whether this item should be withdrawn or not. Member Agor agreed to do this after the move-up agenda.

Chair Aila noted that because this is a long agenda they will move up items K-1 and K-2 he asked public testifiers to limit their testimonies to no more than five minutes.

Item A-1 December 1, 2010 Amended Minutes

Item A-2 December 9, 2010 Amended Minutes

Approved as amended (Goode, Morgan)

Item A-3 January 13, 2011 Minutes

Member Edlao recused himself.

Approved as submitted (Pacheco, Morgan)

**Item K-1 Conservation District Use Application (CDUA) HA-3568 for the
Thirty Meter Telescope by the University of Hawaii at Hilo, at Mauna
Kea Science Reserve, Ka`ohe Mauka, Hamakua District, Island of
Hawai`i, TMK: (3) 4-4-015:009**

Sam Lemmo representing Office of Conservation and Coastal Lands briefed the Board on the CDUA background which proposes the use of about five acres for the observatory site and about 3.6 acres for the access way to connect the observatory site to the rest of the summit facilities. The core of the project is a thirty meter aperture telescope composed of 492 individual mirror segments, a telescope foundation, a dome, support/maintenance buildings and parking, 3400 access way, underground utilities, a four acre temporary construction staging area, repairs and upgrades to HELCO electrical transformers and related equipment at the HELCO sub-station at Hale Pohaku. He referred to page 75 of the exhibits/maps pointing out areas. Page 77 gives an overview of the historic sites, find spots and traditional cultural properties in the Science Reserve. The shaded areas are traditional cultural properties which he named and meet the criteria in historic preservation laws. Page 79 is an overview of the various telescopes in the summit area identifying the astronomy precinct. The red dotted line, Area E is where the proposed Thirty Meter Telescope (TMT) will be built. Page 82 is an aerial photograph of the summit area which gives an idea of the location of the proposed telescope in relation to other telescopes which he pointed out. The area of the proposed TMT on page 83 shows views 1 and 2 - the terrain is relatively flat compared to the pu`us at the summit of Mauna Kea. Page 84, view 3 shows the old jeep road heading to the TMT site which would be improved to two lanes and where the bulk of the 3.6 acre work takes place. View 4 and 5 (page 84 and 85) is where the access road traverses Pu`u Hauki which is in the TCP. It is also the site the only aspect of this project where they touch upon moderately valuable wekiu habitat. It's about a 200 foot area. There is already an existing old jeep road traversing this area which is the higher of the two roads and they would improve these roads to a one lane thoroughfare to reduce the need for grading and thus reduce the impact. There is a two lane road above this to access Subaru. You can see the transformer on page 85. Page 86 shows the batch plant site which is the staging area for construction and where they've staged many large telescope development projects at Mauna Kea. The rest of the exhibits get into the design of the facilities it self. Page 88

which gives a mock up of the TMT facility from different angles where you can see the large dome, the facility support buildings and parking areas. The exhibits starting from page 91 give a graphic construction sequence all the way to dome and support building construction. They gave a thorough description of what would be built at the summit of Mauna Kea.

Mr. Lemmo said in terms of the history, telescope development dates back to the 1960s where NASA built a road to the summit of Mauna Kea in 1964 to test the area for astronomy which was positive and in the late 60s, 70s and 80s many telescope developments occurred at Mauna Kea. In the 1990s, there was a surge of new telescope developments – Subaru, Gemini, Keck II and the Smithsonian Array. At around the same time people in the public, cultural groups, environmental entities were taking greater notice to these giant projects and began to weigh in with concerns about the potential impacts to ecology and cultural resources by writing quite often expressing their concerns about what was happening on the mountain. This all resulted from the 1998 audit which was an audit of U.H. Management Areas on Mauna Kea. The results of that audit were a new and good management regime for Mauna Kea which resulted in the development of the 2000 Master Plan, the establishment of the Office of Mauna Kea Management (OMKM), Mauna Kea Management Board (MKMB) and Kahu Ku Mauna. It created new layers of scrutiny for any type of work or activity taking place on Mauna Kea. And this was a clear divergence from the past when astronomy interests seemed to drive development on the mountain. After all that is what the lease was for that was issued in 1967 or 68 was for astronomy use. Because of all these public interest groups and our new understanding and sensitivity of our cultural and environmental resources the astronomy interests must be balanced with all these other interests. There has been a huge effort over the past 10 years to make this happen. Then they got into Keck Outrigger's comprehensive management planning (CMP) process where U.H. had applied to build Keck Outrigger to support the Keck I and II observatories. The project was approved by the BLNR, but a Third Circuit Court overturned the Board's decision concluding that the management plan approved by the BLNR was not comprehensive. It was clear prior to telescope development that the Board would have to approve a comprehensive management plan. U.H. went out to prepare a comprehensive management plan and that management plan was approved by this Land Board in April of 2009 subject to additional plans and those additional plans were the development of a project development and management frame work, a natural resources management plan, a cultural resources management plan, a public access plan and a decommissioning plan. The highlights of these plans are the 103 management actions embodied in these documents. These management actions are appended to our report and they are represented in many different forms.

Mr. Lemmo said staff believes there is a strong cultural and environmental management framework in place at Mauna Kea. This will improve resource management public safety and project decision making on the mountain. I had to go through this process because the comprehensive management plan is a huge precursor to anything major happening at Mauna Kea. We have to understand this in the context of the comprehensive management planning process, it's critical.

Mr. Lemmo said he is going to talk about the TMT and why they are recommending that you approve this project. The TMT represents many different things to a lot of people as they went through the comment and hearing process. It represents unwise decisions about the use of our environment, unwise decisions about the way we look at cultural resources and values. To others the project represents how we can better understand the universe, how we can search for other planets, how we can better understand physics and has a lot of implications for science. Many believe these two values are not consistent; however there are many people who have weighed in this process and felt astronomy and cultural practices can work side by side and can co-exist. Throughout this process we heard from a lot of different people. Our job has been to try to present all the views we have heard on this to aid you on your decision on the project. Number one we acknowledge and discussed the importance of the ancient and contemporary cultural values and resources at Mauna Kea. In our view, the project does not result in significant effects to cultural resources. We acknowledge these views, we discussed these views, we evaluated these views and in the end we do not feel the affect is significant. We acknowledge the importance of the ecological and environmental values at Mauna Kea and our view of the project does not have a significant adverse impact on these resources. This is all contained in the staff report. Analyzed in the staff report and we've come to conclusions in the staff report about these issues. We acknowledge the U.H. and DLNR past management shortcomings, certainly. We believe that positive actions are being taken while currently in the process to correct these shortcomings. I just discussed the problem of astronomy dominating development on the mountain and how that whole paradigm has shifted to a ground up approach to develop at Mauna Kea. We acknowledge the importance of the project to science and humanity. We also acknowledge all individual views for or against the project that we've received in the process and we feel these concerns have been adequately addressed in the process.

Mr. Lemmo said that at the end of the day our recommendation considers several factors which led us to believe the project is sustainable and is not significantly harmful and therefore could be allowed to proceed. The major factor is the proposed location of the facility is far removed from the Kukahau'ula traditional cultural property and other significant sites. The actual site where the facility is located is out of the main summit area of Kukahau'ula and other pu'u out on the north plateau or at least according to the studies he has seen there has not been any evidence of any cultural or archaeological sites in the project vicinity. In fact, you wouldn't even be able to see this facility from the summit of Mauna Kea. You couldn't see it from Lake Waiau. You could not see it from other places. However, I will say there are certain places in you were in the Kukahau'ula TCP you would be able to see the facility and mostly that is standing on Pu'u Hauoke looking at the TMT. I believe this can go forward because it is operating under a real strong management regime now which is U.H. - Hilo, which is MKMB, which is OMKM, which is the comprehensive management plan itself. I believe the project can occur because it is removed from critical habitat or threatened or endangered species. The area of the telescope is located in a place where there is no critically threatened or endangered species of any kind. There are no birds in the area. There are no insects of any serious concern. There are mosses, lichen and some small flower, but these occur in many other places. And the proposal offers significant benefits to the economy,

educational programs and environmental protection in general. I say environmental protection because TMT will be providing monies to the OMKM to help them better manage Mauna Kea for cultural and environmental purposes. Despite this we acknowledge concerns remain regarding the projects impact on the spiritual nature of Mauna Kea and on the cultural beliefs and practices of many – that is clear. Interpretation of the spiritual impact is based upon individual perception. For some no mitigation is possible and any development on the mountain would be sacrilegious. Modern astronomy is consistent with the trajectory of Hawaiian culture and they trace a line from the traditional navigators through King Kalakaua to today's scientists where this was discussed in the staff report that King Kalakaua had an interest in astronomy before the turn of the century.

Mr. Lemmo related how staff looked at the cultural and environmental impacts in more detail and why they think the project meets the burden of the conservation criteria. The project was considered from the stand point of Kapa'akai, 3-part analysis. Identify the cultural, historic and natural resources in the site. Evaluate the extent to which the Native Hawaiian cultural values and rights would be affected by the proposed project. Identify a feasible action, if any, to protect Native Hawaiian rights. This whole project has been placed in the framework of Kapa'akai and I think it's a very good model for evaluating projects in light of Kapa'akai. At the end of the day what it comes down to is these values were identified – the worshipping, the placement of piko, the gathering of water, gathering of stones and burials were all identified. The affects of the project on these things were considered. What flowed from that is the third part of the Kapa'akai analysis which is how do we mitigate the effect of the project on these values and that is what the key to this project is. Simply by locating the project away from these valued cultural practices is a great mitigation measure in of itself. However, there are other mitigation measures too. There are project level mitigation measures that have been proposed by U.H. which are listed in the report and one of the major ones is TMT will be contributing funds to the University to help with the cultural mitigation plans and the environmental resource mitigation plans at Mauna Kea. With respect to biological resources – location, location, location except for that small section of the access way there is no affect to the wekiu bug. There might be a small affect to the wekiu bug from that small area at the base of Pu'u Hauoke cinder cone. However, to mitigate that U.H. is going to be monitoring the affect on the wekiu and other arthropods for two year and they are going to be implementing other resource protection plans to account for any impacts to these resources.

Mr. Lemmo concluded by saying looking at the big picture. There are currently 13 telescopes at the summit of Mauna Kea. If you built TMT today that would make 14 telescopes. However, as expressed in the plans and reports as identified in the Decommissioning Plan and other reports of U.H. the CSO facility – Caltech Submillimeter Observatory which is down in the saddle is scheduled for removal. If this project were approved and built pursuant to the schedule proposed CSO would be gone by the time TMT makes first light. Then you would have thirteen telescopes, but it doesn't stop there. They have talked about in these plans of removing other telescopes and are considering removing another telescope from Kukau'ula, the summit peaks.

They are talking about removing another telescope, a radio telescope from the saddle. And, they are talking about removing the BLBL telescope which is two miles down the road from the summit. They are talking about possibly having a total of 10 telescopes in the summit area and that's with TMT in the future. In general, OMKM has a perspective of migrating the telescopes off of the pu'us in the future. It is our opinion that although this is a very large project it actually has much less of an impact than smaller telescopes located on the summit pu'us. While some may consider the north plateau sacred ground there are no known cultural or archaeological features at the observatory site itself. That site is not known to be home to any wekiu bug which prefers the loose cinder on the slopes of pu'u. The University has done everything it has been asked of it as far as compliance with the Third Circuit Court's decision on Keck Outrigger. Staff believes the project is procedurally sound. An EIS was completed and management actions under the CMP are continuing to be fulfilled. We had public hearings as required and there has been a full solicitation of public input on this project. In light of what currently exists on the mountain and what actions might be taken in the future – a reduction in telescopes, additional resource studies, site restorations. We believe the project will not cause substantial impacts to cultural or natural resources and we are comfortable recommending approval of this project.

Mr. Lemmo said I would like to make a couple proposals for amendments to my staff report though. Having looked at it for a few weeks there are a couple things we would like to add. The TMT application itself for the CDUP, they actually submitted a TMT management plan which is a site management plan for the TMT site which is very descriptive. I want to reference that in the report and I wanted to state that you are also approving the TMT management plan. Not to be confused with the CMP, this is for the site. I have developed language for you that essentially say the TMT management plan is approved including all specific management actions articulated in the TMT management plan including cultural resource management, natural resource management, education and outreach, astronomical resources, permitting enforcement, infrastructure maintenance, construction guidelines, site recycling, decommissioning, demolition and restoration, future land uses and monitoring, evaluation and updates. These management actions and their associated mitigation measures are incorporated as conditions to this permit. The TMT management plan is essentially there to reflect and embody all of the major management plan actions of the CMP. It specifically describes how it will fulfill these larger management actions proposed in the CMP. They need to be appended to the approval so that TMT is now required to implement all of those management actions identified in their management plan. The other thing I want to add is an amendment to condition #7 to read "All mitigation measures and management actions contained in the historic preservation management plan, construction plan, historic and archaeological site plan, maintenance plan, arthropod monitoring plan are incorporated as conditions of this permit." I want to add a condition that says "TMT will set aside funds annually in a sufficient amount to allow for the observatory and access ways site restoration." This is part of the decommissioning process they are going to have to set aside monies so that they have money in the bank when the time comes to take the telescope away. The might already be part of the TMT site management plan, but I wasn't sure so I wanted to add it in now. The other thing I wanted to add was "Day time activities at TMT will be

minimized on up to four days per year as identified by Kahu Ku Mauna.” That is a mitigation measure proposed by TMT. Shut the lights down a bit; shut the process down so that on certain days Native Hawaiians can have even more solitude. I want to add one more condition “If a contested case proceeding is initiated no construction shall occur until a final decision is rendered by the Board in favor of the applicant or the proceeding is otherwise dismissed.” I am available to answer any questions.

The Board members asked for a copy of the amendments that Mr. Lemmo described.

Marcie Greenwood, President of the University of Hawaii introduced Mr. Perry White of Planning Solutions, Inc. that prepared much of the TMT CDUP and Mr. Barry Taniguchi, Chairperson of the Mauna Kea Management Board (MKMB). President Greenwood testified that the University of Hawaii is excited at the prospect of bringing to Hawaii this next generation telescope which will teach us much more about our universe than what we know. It’s going to provide our young people with unexcelled opportunities, really unusual opportunities to learn to be the leaders as we understand our universe and our place in it over the next many decades. It’s taken a lot of years to get to this point and we all (those at the University of Hawaii and partners) have learned a great deal along the way and one of the most important lessons we’ve learned is a deep respect for the many values that need to be protected in our management of uses on Mauna Kea and a great appreciation for the individuals who we might once have thought as opposing us. I think we have come to considerable understanding. As heard in Mr. Lemmo’s presentation, the use of the telescopes and the use of the mountain have evolved over a number of decades. We believe that a deeper understanding and a commitment to caring for those resources is something that we are deeply committed to and I offer that as an insight into our process here. They think the staff’s report is excellent addressing all the relevant topics in a logical and balanced way. They do support the recommendations and conditions and they stand ready to implement them immediately should a permit be issued. The development of the plans for the TMT project has benefited immensely from the existence of the CMP for the University of Hawaii activities on the mountain. This will be the first observatory to be built with the plan in place and the framework that it provides allows the TMT designers and partners and our staff to be much thorough, organized and balanced than had been the case or was possible prior to the CMP. There has been a lot of work with the community and we are very proud that the TMT has taken the time as well as the University to really do a thorough job as we’ve done these rather massive documents that you all have before you. I wanted there to be no doubt the importance the University attaches to TMT and to emphasize the University’s commitment to ensuring the conditions in the attached CDUP and the measures that we have committed to in the CMP will be met. President Greenwood introduced Chancellor Straney – U.H. Hilo, Stephanie Nagata – Director of OMKM and Bob McLaren – Institute for Astronomy (IFA). The TMT team includes Sandra Dawson, Gary Saunders and Michael Bolton. She also named consultants for the EA/EIS and the historic/cultural aspects of the application.

It was asked by Member Edlao whether the University is making efforts towards their decommissioning plan. President Greenwood confirmed that there is a decommissioning

plan. They know that the Caltech Submillimeter Observatory will be planning to decommission and there are evolving plans for some of the other telescopes that they will be working over time with to have a clear understanding of the conditions of the decommissioning plan and compliance.

Member Edlao asked whether there is a timetable for the decommissioning. Bob McLaren confirmed there is a timetable for the Caltech Submillimeter for the period 2016 or 2022. Of the other telescopes, there are no thoughts of replacing them. They can't predict exactly when that would be, but he would guess two or three of them within the next decade will fall in that category. The decommissioning plan is explicit about the number.

Representative Jerry Chang testified from his written testimony in support of the project because we are fortunate to have one of the best geographical sites in the world for the study of astronomy that we should take advantage of this asset to secure the TMT. The EIS addresses plans to mitigate environmental concerns and acknowledges the different concerns on the impact of cultural resources. He believes these issues can be resolved satisfactorily given the Legislature passed the measure in 2009 giving the University of Hawaii the authority to oversee management of the Mauna Kea lands. As the then Higher Education Chairman and introducer of that bill which was signed into law as Act 132 allowing the University to adopt rules that address and resolve any conflicts on the mountain. Administrative Rules governing public and commercial activities on Mauna Kea lands are necessary to provide effective protections of cultural and natural resources from certain public activities and to help ensure public health and safety. The bill sets the stage for the proper management of Mauna Kea in a way that is respectful to all the users. He supports the project because he believes it will provide much needed economic development to the Big Island. It will create highly skilled jobs for our young people interested in science and attract top scientists from around the world to work and live on the Big Island. TMT is currently developing a work force pipeline program collaborating with the University of Hawaii, Hawaii Community College, Department of Education, as well as charter and private schools to identify appropriate apprenticeship programs with the trades. The Hawaii Island new knowledge fund of \$1 million dollars per year will go a long way to educate our children for these high paying, high tech jobs that will be available. This is Hawaii's opportunity to show the world that we can at once support the advancement of science while respecting and preserving the host culture.

Doug Simons, a Big Island resident testified relating coming to Hawaii as a student at U.H. in 1986, getting his degree in astronomy in 1990 and becoming a staff astronomer at Mauna Kea. He is one of the last of the original construction team for the Gemini Observatory. Mr. Simons is not here to advocate for TMT although he would like the Board to approve this application, but explained how the other observatories see TMT by giving his forecast of how it will play into a bigger network at Mauna Kea. He displayed and described a couple photos from the Gemini web page photographed from UKIRT next door and how they find rare objects and its background. There is a synergy between the facilities. Between the smaller and bigger telescopes you get a comprehensive look at the universe. At Gemini you could not find this object because they are a narrow field

telescope. UKIRT couldn't do this observation because it doesn't have the light gathering power that the Gemini has. Between the two they work beautifully together. Mr. Simons described a couple more photos where one shows almost to the beginning of time to look at objects and there is no telescope that can record the spectrum which is the regime of TMT. He is also a game bird hunter having spent thousands of hours walking around on the summit of Mauna Kea showing a picture of his 5 year old son and the unique nature and ecology of Gemini is just as important as is the scientific utility of the site. He experienced the construction of the Gemini Observatory and knows what it takes to put one of these together and is equally committed that future generations have access to this on an environmental stand point. And, he fundamentally believes the TMT crew can pull this off, they can make it a wise facility that not only respects the Native Hawaiian community concerns, but also the environmental concerns and put it all together quite well.

Greg Chun, President of the Hawaii Island Economic Development Board (HIEDB) testified he is here to talk about the right way of doing business the way Hawaii Island likes to do business. It's not about astronomy. It's a relationship to the mountain. There are three points he addressed supporting TMT that is germane to the Board's consideration of this application. Is astronomy a compatible use with the mountain? Managing our relationship to the mountain - do we have systems and processes in place to ensure proper stewardship of the resource on all levels? Character - even if you have the right use and the right systems in place a lot could still go wrong if the applicant and those practicing their science on the mountain aren't of the right character. Has the applicant demonstrated sensitivity to the mana of this place and a willingness to be a part of the dreams of the people of this place? In short is the applicant the kind of neighbor we want for Hawaii Island? On a regulatory point of view, astronomy is a permitted use in the conservation district that's been established. The compatibility question has been reframed to be one of compatibility with cultural values in the spirit and mana of the mountain. In that regard he would say it is a compatible use. His kupuna utilized that place for various kinds of practices understanding the spiritual and special mana of this place. Our ancestors didn't distinguish between practice and spirit. All of their practices were conducted in the most spiritual places. They sought these places or they acknowledged the spirit of the place when they found something there that would support a practice whether adze making, harvesting a tree, whatever the case may be. Our ancestors built in places that today we would never allow development to occur and he knows this because he is responsible for restoration of a coastal heiau in Kona. The question of compatibility is not whether a practice fits within a cultural framework. The question is do we have the systems in place to ensure that those who practice their science on the mountain is going to do so in a way that respects the beauty and the special nature of this place on all levels. Have they demonstrated a character to be considered trustworthy to do what they said they are going to do? The first question of systems and processes he gives a lot of credit to those who fought development on the mountain. We are in a better place today in terms of having plans and systems and structures in place to manage a relationship to the mountain. We have had a long history of imperfect management of that relationship, but we are in a much better place today to ensure that anybody practicing their science up there is going to do so in a way that is respectful and

considers all those values that we hold dear. The second thing is the character of the applicant and here it's the University of Hawaii technically, but it's the TMT people who need to make this happen. In their role at HIEDB, they worked closely with and for TMT in helping them with their community outreach and communications. What he has seen is TMT has been good listeners; they've adapted their plans and approach based on input by the public and from HIEDB. They are a leader in their own way in trying to pull along the other observatories to start being better corporate citizens on this island. Despite not having all of their permits in place they have made huge commitments and investments already in bettering the residents of Hawaii Island. Mr. Chun is a resident of Kona and if asked whether this is the kind of neighbor I would like to have? Unequivocally, yes. It has never been about astronomy but how we manage our relationship to the mountain. I think we have the systems in place as well as the character of an organization that says to me that is the kind of neighbor I would like to have.

Roberta Chu testified she is fourth generation from Hilo, Hawaii and the former chair of the HIEDB recommending approval of the CDUA for the CDUP. She attended the meetings over the last several years and praised staff's (Michael Caine) work on the report which was done in an excellent manner and was well written in bringing forth the issues. Ms. Chu agrees with staff's recommendation to approve the application subject to TMT providing a million dollars annually adjusted for inflation for our community's benefits package which will commence with construction and continue through the term of the sublease. The package will be administered via the Hawaii Island New Knowledge Think Fund Board of Advisors. She reported that a group of individuals have been working for two years to provide the framework for this fund such that it will be managed appropriately and with necessary transparency required to meet the commitment to the community. She also believes TMT is committed to complete sufficient measures to minimize its environmental and cultural impact on Mauna Kea. She hopes the Board will agree with its DLNR staff that this important project should be approved subject to the conditions outlined in its report.

Jacqui Hoover, President of Hawaii Leeward Planning Conference and Executive Director of HIEDB and a Native Hawaiian born and raised on Hawaii Island related some family background. She testified in support of TMT and its environmental and cultural commitment to malama Mauna Kea. Over the last decade the OMKM, cultural experts within the Kahu Ku Mauna Council and our island community worked tirelessly, collaboratively and respectfully to implement a sustainable management practice to preserve and project the unique cultural and natural resources within the University of Hawaii's management areas on Mauna Kea. Astronomy is an identified use in the conservation district resource sub-zone under a separate and broad public process. The Mauna Kea CMP and its sub-plans were approved by this Board and is enforceable and in affect. The TMT project has an in-depth management plan that implements all relevant action items of the CMP ensuring the management actions applicable to the TMT project are effectively and responsibly implemented. She supports these best management practices and knows they will continue to malama Mauna Kea. Protection of historic and cultural resources has been a major objective in the planning of the TMT resulting in locating the project in Area E off the summit. This area has no substantial

impact to any cinder cone on Mauna Kea. The TMT project will not be visible from the summit of Mauna Kea or from Lake Waiau. The project is being placed in the right area. TMT has committed to cultural and environmental mitigations that extend far beyond the requirements of their application. TMT will implement an action policy of zero waste management. All waste water will be collected and taken off the mountain to be transported to a waste treatment and disposal facility on lower lands. Although the main project site is not considered critical habitat for any plants or arthropods species TMT is also committed to working with the OMKM to develop and implement a habitat restoration study. They committed to a ride sharing program be implemented to reduce the impact and number of vehicles and there are many more project mitigations that have given this project broad support. Ms. Hoover related how her sons studied and used traditional and modern wayfinding methods. Also, hoping that one son who is studying astrophysics and advanced optics will come home to work in Hawaii. She supports a new beginning for her children and future generations that includes TMT and affords opportunities to remain firmly rooted in our culture and traditions learning from the past and the present while embracing the future.

Jon Miyata, President elect for the Hawaii Island Chamber of Commerce testified relating who they represent and the importance of TMT in fueling economic growth by providing hundreds of construction jobs for the better part of a decade and further diversify, grow and sustain our economy. TMT will provide our children with the opportunity to utilize their scientific and technical talents without having to leave Hawaii noting that he has two children interested in the science and technical fields. Having TMT here in Hawaii will contribute in furthering Hawaii's goal of diversifying our economy by focusing on more sustainable market areas such as science and technology. We envision TMT being a point of focus for our island by encouraging educational excellence that could form the basis for technology base, innovation driven opportunities and energy, agriculture, information technology and scientific research and support. The project will employ approximately 140 full time employees and will create additional employment opportunities through TMT's use of local companies. They applaud TMT for the collaborative, comprehensive and transparent process utilized up to this point by holding community meetings, soliciting feedback and addressing concerns by developing and documenting thorough plans. Mr. Miyata attended many of the public hearings and was disappointed to hear the opponents referencing shortcomings and broken promises which occurred in the past by others as a basis of stopping this project. The TMT clearly intends to do things right and they feel the comparisons are unwarranted. Their members also support TMT's proposed use and believe it is consistent with the astronomy facilities within the University management areas and will be operated in a manner that fulfills the objectives of the conservation district resource sub-zone. TMT is consistent with the Mauna Kea Master Plan, the CMP and its sub-plans as well as the project's own management plan. They strongly recommend the BLNR approve the CDUA.

Dean Au a Field Representative for the Hawaii Carpenters Union, Local 745 on the Big Island testified that they strongly support the CDUA that it is a sensible plan and if implemented it will comply with the CMP. The construction of the facility will follow the same direction as other telescope facilities on Mauna Kea. TMT's use of the

mountain is appropriate in comparison to the current leases. They trust TMT will follow the rules and regulations set forth upon them. Up to now they have been doing everything they said they will. He welcomes TMT to educate their children, to employ his fellow residents and to live and play amongst us. As Hawaii residents we can help TMT be one of the leading telescopes in the world with our Hawaiian culture and aloha spirit. They asked to vote in favor of the TMT CDUA.

Noa Helela, a 17 year old student from Hakipu'u Learning Center testified that he has a connection to Mauna Kea and has been testifying for the protection of Mauna Kea since he was 8 years old. The only difference is it went from several telescopes to one huge one and wanted to know when this madness will stop. We will use the TMT to destroy the ground to study other planets while we hurt our own. He thinks a billion dollars could go to better use like feeding starving people in the world and that astronomy is something that you do if there is extra money. This is a waste of resources.

Hanaloa Helela, father of Noa Helela testified with the economic situation today he thinks this whole projects needs to be reassessed. Mr. Helela loves astronomy and science, but we are not taking care of this planet too well. The reality is economics that the majority of the people testifying in support of this project all have a direct connection to the money which he thinks should be considered. If we look at it at a scientific point of view he thinks there has to be a lot more sensitivity to what's going on the mountain and what is going on with the people. The concerns of those opposing this project needs to be taken more seriously. It seems like it's a done deal by the time they get to these hearings. Mr. Helela thinks we need to take a step back and consider whether this is necessary. He has heard people say they are taking into consideration the Native Hawaiian cultural issues, but he hasn't really heard proponents speak elaborative to how that's being considered. This BLNR meeting is designed to disway the voice of the people and sadly, the voice of the aina is even softer. Mr. Helela asked to reconsider as less as a financial opportunity and more in a holistic way. How it will effect the environment and culture down the line. Referring to previous testimony that it wasn't fair to compare the TMT project to previous projects of broken promises that you can't blame people who have been burned already and they see that torch coming...

Keali'iwawae Keli'ikoa testified that they do Makahiki events around the islands. He is concerned that besides the fact that this is a very spiritual place the people up there have not maintained proper or pono environmental impacts. There's mercury spills. You plan on building this huge structure – the toxins from the paints compare it to the Halawa Stadium. This is another toxin that does not need to be up there. He understands the western world's desire to explore space and he thinks there are technologies that would allow us to do that in a better more environmentally friendlier way.

Barbara Hastings, a partner of the firm Hastings and Pleadwell Communications Company that has offices on Oahu and the Big Island and she lives in Hilo testified in support of the CDUA. Ms. Hastings referred to previous testimonies regarding King Kalakaua's interest in astronomy and Polynesian Wayfinding that every public school student on the Big Island has an opportunity to learn about astronomy and they don't

want to take that away. Not all children have this opportunity. We should inspire our children to go to space. TMT already does that through education. Many people have worked hard to do things in a pono manner devoting a lot a time away from their businesses to get the community together on this and their island has benefited from it. She asked to have this teleconferenced because people are still on a plane to get here. This is no disrespect to any culture but to understand the universe and asked to support this project.

Glenn Ida representing the Plumbers and Fitters Local 675 testified advocating the economic opportunities generated by the development of the TMT. There have been few projects that have gone through as lengthy a process as the TMT. There is lots of input by the community. There is a need for jobs now and in the future. His grand daughters will be the beneficiaries of all the educational programs committed to the residents by the TMT observatory. He reiterated previous testimonies regarding the non-profit funding toward education. Plumbers and Fitters Local 675 supports the CDUA. Also, Mr. Ida spoke on behalf of Reginald Castanares who apologized for not being here and submitted his written testimony. Mr. Castanares is the President of the Hawaii Building Trades Council AFL/CIO and he is in strong support of the CDUA.

Al Lardizabal representing the Hawaii Laborers' Union testified that he submitted late testimony. He related Ellison Onizuka's sacrifice in pursuit of scientific knowledge and taking his son to meet him. This is an opportunity to pursue further into the universe by this project and they asked that this project be supported. Their members discussed this as a construction project, but over time it was discussed as an educational opportunity for their children. They respect and acknowledge the concerns of the project and hope to work together and move forward for our future.

Randy Kurohara testified that he was here on behalf of the County of Hawaii, Department of Research and Development and will relay statements from Mayor Kenoi. Also, he is President of the Japanese Chamber of Commerce and has children who are interested in engineering. On behalf of the County of Hawaii, they expressed support of the Thirty Meter Telescope. The 1.3 billion dollar project has selected Mauna Kea as the home for the observatory which will result in \$26 million a year in local spending. The support contracts and related industries that TMT will attract will positively impact further our local economy. TMT will make available millions of dollars in benefits to provide scholarships and new educational opportunities in science and technology. It will help their children achieve excellence so that they can become the workforce for the jobs being created on Mauna Kea. TMT is a key component of the future of Hawaii Island. It represents beyond the 144 full time jobs it creates of keeping some of the best and brightest here at home versus living away to find work. It represents a workforce development that will create a sustainable future of growing and raising our own workforce. Mayor Kenoi wanted him to share that the TMT represents a sacred science on a sacred mountain. It represents science and technology for our children. We will raise our own astronomers and integrate this technology into our community and reshape our local economy. The County of Hawaii asked the Board to grant the CDUA knowing that TMT represents a new paradigm for our development on Mauna Kea.

Clyde Hayashi had submitted written testimony and testified that he is the Director of a partnership between the Hawaii's Labor Union and Union Contractors and he related who they are. He submitted written testimony in support of the CDUA relating meetings held on the Big Island with members and outreach efforts that the process was proper and very open. Many of their members are Hawaiian and support this project that there can be a balance between the culture and science. This represents hope for the members who are out of work and opportunities for their children to stay here to work.

Kelson Lau testified that he is a 2009 Waiakea High School graduate, currently an electrical engineering student at the University of Hawaii at Manoa and is a part-Hawaiian in favor of the TMT because he thinks it's a good opportunity for growth of Hawaii's technical expertise especially for the Big Island. He related his experiences through the robotics program during high school having traveled and been exposed to other opportunities. Also, internships he has done in Hawaii and on the mainland where he plans to work, but ideally he would like to stay on the Big Island with the opportunities of the TMT in the future.

Richard Ha (submitted written testimony) testified that he farms on the Big Island and is a member of the HIEDB relating the formation of the TMT committee to help TMT because he is Native Hawaiian. There was something not right on the mountain and the committee would help TMT do it the right way. Some insight on TMT when it was considered to go to Chile. Henry Yang from TMT is a people person and he was the kind of person who could do business with a handshake. Never need lawyers. TMT did not talk to the press and met with the people directly. They had been to Keaukaha School four times where Mr. Ha described going there on Kupuna Day and stopped by to get a flavor of what was going on. The reception was Henry and John what are you doing? Where are you guys going? They were so much a part of that it was that comfortable. Come, come, come go eat. It made a huge difference - the approach. They went down and met a whole bunch of people and then at the end of the period they realized the lowest common denominator that all folks outside of the issue could agree on was education and that is how the think fund was developed - one million dollars annually for the construction period plus the life of the telescope, maybe \$58 million dollars worth of keiki education. Like he said it was on a hand shake. They simply said we are going to commit to do this so while all the negotiation was going on that fund was set on the side and nobody is going to touch um. The folk on the other side of the issue, Hanalei folks, Kealoha and even Marti, the process was most important. Patrick Kahawaiola'a, President of the Keaukaha Community Association told Mr. Ha several times, if the process was so important to get the best result then you got to aloha everybody on all sides of the issue. As an example, they had sign waving and it wasn't about who get more people it was about celebrating the process. They went there and told people bring your kids and whatever because we are here to celebrate the process and not fighting against each other. This is the culmination of it now that is we're going through the process and we aloha everybody. This is real significant because what is happening today right now is what should be happening in all kinds of projects all throughout the State. This is a real big deal taking place.

Kealoha Pisciotta, President of Mauna Kea Ana Hou, a Native Hawaiian organization testified she is both Hawaiian and practitioner therefore a beneficiary of the admissions act and constitution. She had written testimony, but she thinks she'll change it. There are a lot of people saying that they shouldn't have to talk about the past bad history that the State auditor already evaluated or the past court cases -- Federal and State both of which found in favor of us and found in favor of the protection of Mauna Kea and not in favor of more development. The University is correct that astronomy is a sub-use in the resource sub-zone, but that is as the court said their ability to prove that the purpose of the conservation district itself can be maintained. So while it is in use it is a use that is highly protected. The natural resources take precedent over that use first and foremost. She reminded us that we are testifying before the State's DLNR and not the State's Board of Economics. The purpose of this body is to uphold conservation and not necessarily to create economic gain. There are zones all over the archipelago that allows for industrialization and enterprise, but there are places like Mauna Kea which are conservation districts. When people say we should let go of the past what they are not recognizing is that the past is relevant because it exists in the present. As a practitioner my rights are impacted when my ahu is taken down for the seventh time as it is down now. Ms. Pisciotta related how her ahu was taken to the Hilo dump where she found it. Her family pohaku is gone permanently now. The pohaku that replaced it for the third time belonged to Auntie Edith and that one is gone too. When they do ceremony they are followed by the rangers and photographed against their will. One of our big issues is that access be given to the whole site. So we do not agree with any plans to regulate action. You can regulate practitioners' rights, but you have to be able to show that those rights are unreasonable. Now while there are signs that say you must not disturb the landscape -- don't build ahu, don't do this -- we're contemplating building something that is 18 stories high and nine football fields big. The traditions of Mauna Kea when I hear a malihini come up and say it is not desecration I would not presume to speak to the mind of the king or what the navigators were thinking. I find that offensive because there is living practitioners' right here, today whose practices are not being protected that's why we're in this. We are not in this to hanaino astronomy. I worked in astronomy for 12 years as a telescope systems specialist. I was able to get a job there, but I could not rationalize that job with the bad treatment of my culture. And when we say can culture and science co-exist -- it is co-existing. It is one at the expense of the other! We will tell you when you can access Mauna Kea. All of this management structure they have is basically the University, University, University. This is not the practitioners involved in this management. There are Hawaiians and that's fine and they may be practitioners. Some are practitioners on Mauna Kea and some are not and they acknowledge that, but they are appointed. They are not chosen by the people. Being a practitioner and kahu is a socio-religious identification made by the people not by a government. When the staff says that the environment will be protected, how can the staff say that when what is required is federally viewed? Did they receive Federal funds? Then what of that is pertinent? When they say the cultural resources are going to be protected then why are all of us over here as cultural practitioners saying it's not. When people get up and say this plan will protect cultural and environmental are they planners? Are they natural resource protection people? Are they practitioners? These are the questions that you have to look at, consider and weigh that testimony. There is no requirement that it be an

economic permit. With this procedure we've asked for a contested case hearing, but what we understand and this is the palapala that came to me it said you will be approved considering the approval of the permit, the CDUA, the contested case hearing request and granting the chair the right to appoint a hearing officer for a contested case hearing. The procedural problem here is a contested case hearing has to go before permit approval. At least that's the way it works in the rules and the reason is because contested case hearings is to make sure citizens like us that don't have standing don't have to go into court. The contested case hearing is a process whereby you're allowed to present facts and information to the decision makers (the Board) via the hearing process so you can make an informed decision. But, if you make your decision before like if it is approved today then you grant the contested case hearing. There is no point and it will force us into two battle fields, into two courts. Do you understand? We'll go into contested case hearings, but we'll have to address the permit itself because the one major thing you guys got to look at are the eight criteria this project will have significant impact. It is admitted in your own documents. How do you fulfill that? The eight criteria are not or right? You got to fulfill all not just one or two. What I am asking you guys is to consider that we don't put process "B" before process "A"? It is equivalent to a Judge ruling before he has the evidence so I don't know why it's gone on like this, but we've had this problem before. We know others have. Haleakala has a situation too. We just want to make sure that we say that and make the record that we've said this because it's just an opportunity for us to make sure we give you all of our knowledge. The last thing I want to speak to Mauna Kea itself. The traditions on Mauna Kea gave the king the right to rule. The traditions on Mauna Kea gave our people the scientific knowledge to circumnavigate the biggest ocean in the world around the time of the birth of Christ. These are the traditions we are trying to protect. Maybe not everyone understands that, but we want that to be in the record. These are the kinds of traditions that are impacted when the landscape is destroyed because those are the markers for all the constellations so on and so forth. A king cannot rule without recognition of Akua from there and a queen at that matter. The navigational traditions need to be documented as true science because it meets all the requirements that are observable, repeatable and measurable. Papa Mau can point to India in daylight and that is a science. What we would like others to recognize is that our science and spirituality is being affected, our abilities to do these things and to teach our children and grand children.

Ross Wilson grew up in Hilo, but now lives in Holualoa and is Native Hawaiian testified in support of TMT describing how TMT came to town wanting to do things differently. They wanted to listen and above all they wanted to do the right thing. TMT absolutely adhered to and followed the process. They have gone way beyond what is required of them. Prior to doing its EIS TMT conducted pre-scoping meetings around Hawaii Island. Instead of doing one or two they conducted seven - six on Hawaii Island and one on Oahu. Much of the early criticism of astronomy at the time was Keaukaha which was where the first pre-scoping was held. The meeting wasn't pretty and in fact quite painful as the community told TMT about past wrongs and of thoughts of what TMT should include in their studies for their EIS. TMT proceeded to have pre-scoping meetings in Pahoa, Ka'u, Kona, Waimea, Kohala and Honolulu. This is what TMT heard from some of those meetings. Don't build it on the summit. Build it where it will do no harm to any

endangered plants, animals, archaeological and cultural sites. Build it to blend in with the surroundings. Take your waste or opala off the mountain. If you put a telescope up take one down. Hire local people for the high tech jobs and education is an important community benefit to the health of our community and can provide generational changes. TMT promised to come back and report to these same communities when their draft EIS is complete and did so. They then took input before completing the final EIS. TMT continues to be open and transparent throughout this process. TMT listened by setting a new example and a new paradigm for responsible development on Mauna Kea. He urged for the Board's support of the CDUA and the granting of a CDUP.

Jonathan Osorio, Professor of Hawaiian Studies at the Center of Hawaiian Studies, University of Hawaii – Manoa is a Board member of KAHEA born and raised in Hilo, Hawaii, but haven't lived there in 40 years. (He submitted written testimony.) He testified against this project to let you know that not all Hawaiians agree that this project should go forward and not everyone in the University community does as well. Some of his objections have been stated by previous testifiers more eloquently than he since he is not a religious practitioner. However, as a historian and as someone deeply concerned with the nature of ceded lands and the management of ceded lands he was concerned about the arrangement by which these telescopes have proliferated on the mountain. He was concerned that the State of Hawaii nor DLNR nor OHA receives due revenues from these sorts of projects. In the kind of economic situation we find ourselves in, that is one of the things this Board needs to consider when it looks at projects like this one. Mr. Osorio heard earlier testimony that the creation of these telescopes is not contour to Hawaiian culture and he won't argue that, but the first time you see that telescope on top of that mountain from Hilo the majesty of that mountain was lost at that point. To a certain extent he believes as a people we tend to be less and less awed by nature the more we build on it. The more we go into places that our ancestors went we were very careful where they went on tops of mountains about our presence there. It was considered a place that structures didn't get built. They were sensitive to this and they understood it. He believes you (the Board) are the konohiki of these lands and our ali'i who were konohiki before had to take into account so many different kinds of things when they made decisions about resources and how they were allocated and how they were used to develop. You have a difficult decision to make here. It may very well be that what we need to do is look at this and give a contested hearing a chance to present more information, more facts and more people having access to give these kinds of testimonies before you can make a decision. We definitely do not believe that you should make an approval today.

Kalepa Babayan submitted written testimony for Kahu Ku Mauna and for himself and testified from them. He is a member of Kahu Ku Mana, a voluntary Hawaiian Advisory Council to the OMKM and MKMB. As a council of Hawaiians we support policies and actions that lead to responsible stewardship on Mauna Kea, create systems of best practices that promote collaboration and the sharing of resources among the observatories and the lessening of their collective impact, and endorse any action that lead to the rapid decommissioning of telescopes from the summit area. In May of 2010, the council offered the following opinion: Kahu Ku Mauna stands against any construction project

that brings substantive impact to the summit of Mauna Kea. As such we do have reservations and concerns about the proposed project. However, we do recognize that TMT offers a strategy for the decommissioning and removal of observatories from the summit area by providing a tool for better astronomy and making those of lesser quality obsolete. We also recognized that the placement of the TMT project in the North Plateau lessens its visual impact and locates the observatory off the summit, a location that the council hopes will someday be free of all telescopes. Lastly, the council is in agreement that the leaders of the TMT project have demonstrated intentions of responsible tenancy that strives to meet the standards established by OMKM, therefore making the project less objectionable to the council. Kahu Ku Mauna offers no objections to the CDUA as submitted by the applicants. Kahu Ku Mauna members are Ed Stevens, Arthur Hoke, Larry Kimura, Kihalani Springer, Antoinette Mallow, Sean Naleimaile, Tiffinie Kakalia and Chad Kalepa Babayan.

Mr. Babayan testified my relationship with Mauna Kea is grounded in the many occasions that this sacred mountain has lead me back to my home and my family as a practicing navigator aboard Hawai'i's deep-sea canoes. At night as you approach the Big Island, Mauna Kea rises out of the sea its summit framed and covered by a blanket of stars. At sea, on a cloudless night, when staring at the awesome sight of Mauna Kea, the stars reach down and touch the skin of the mountain and you recognize that they are the same, Mauna Kea and the sky, and that Mauna Kea is truly the portal into the universe. The slopes of Mauna Kea hold a record of how a very adaptive and intelligent people for continuous generations utilized the mountain as a resource, excavating high quality durable stone to produce the best Neolithic tools in the Pacific. Mauna Kea's adze quarry, the largest in the world, offers conclusive evidence that ancients recognized the importance of Mauna Kea's rich resources and its ability to serve its community by producing the tools that shaped their future, built their homes, and deified their gods. Using the resource of Mauna Kea as a tool to serve and benefit the community through astronomy is consistent with the example. To value astronomy and its work on Mauna Kea, you have to value the importance of 'ike, knowledge, and its quest to bring a greater understanding of the universe we live in. As a learner, he appreciated the science of astronomy as he does all sciences and the cause of advancing human knowledge to the benefit of the community. The leaders of the TMT project has taken it upon themselves to offer a community benefits package at a level that no other observatory has previously considered. Those benefits will go a long way towards affording many from our diverse community the opportunity of a higher education and a securer future. Mr. Babayan understands that the leaders of TMT are considering cultural mitigation measures, whatever that manifests into, and would advise TMT's leaders to proceed with caution. Do not assume that it is enough to endorse a check and that mitigation is accomplished. Mitigation acknowledges that there exists an aggrieved community to ensure that the intent, integrity, and generosity of the TMT are delivered upon. He recommended that you choose wisely about who will provide those measures and that the selectee goes through a process of review of the proposed actions by an external panel before activities are implemented. His perspective of Mauna Kea is grounded in the tradition of the oceanic explorers he descended from, a people who left the safety of the coast, sailed away, and in so doing discovered the stars. As a Hawaiian he recognized that he is a

descendent of some of the best naked eye astronomers in the world has known and he will advocate for participation of Hawaiians in a field of science that continues that tradition, a field in which they ought to lead. He believes that the highest level of desecration is when we remove the opportunity and choices for the kind of future our youth can own, as a navigator his spirit is defined by the horizon he freely chose to explore and he opposed any action that denies similar opportunity to future generations. Lastly, at times he finds the knowledge revealed through astronomy frightening and disturbing, of galaxies colliding and black holes consuming, but he treated the fearfulness of those discoveries with an islander's perspective, recognizing our remoteness and vulnerability, surrounded by sea on our horizons and an ocean of stars overhead, and yet we continue to survive. He recognized that our planet is part of the greater natural cycle of the larger universe and that there is little that we can do to influence that future. The ultimate job of humanity must be to insure that our planet lives a full and fruitful life and he does not think that it is science fiction to recognize that our future lies in the darkness of space, somewhere among the stars that gave us life. Astronomy must provide the answers to where our future will be and what we will have to overcome to get there. In order for humanity to survive we will have to travel light years, but each of us only have a lifetime to contribute to that effort, Mauna Kea as well as life is sacred and he recommended we proceed with the work of insuring our future.

Marti Townsend, Program Director with KAHEA - The Hawaiian Environmental Alliance testified in opposition. Relative to process referring to agenda item K-2 recommends a contested case hearing process. Because it is on the agenda and needs to move forward your only choices today is to defer or deny this permit. She referred to written testimony she submitted earlier pointing out a diagram that explains how the contested case process is suppose to work. There is no arrow from the Board making the decision to contested case decision and back and that's because the contested case hearing process is not a motion for reconsideration. It's not saying hey Board you made a mistake and you need to consider this other information and re-vote. It's a process for you to collect information because in these kinds of meetings we only have five minutes to speak we don't get to cross examine witnesses. The actual facts don't get to you, at least not in the way that it should so you can make an informed decision. Today your only options for decision making are to defer the permit until the completion of the contested case or to deny the permit. Now to the staff submittal and the reasons why you should deny drawing your attention to the criteria and appended in their written testimony. There are eight criteria and staff's recommendation. This is an extremely thorough document, 300 pages. Ms. Townsend read Hawaii Administrative Rules § 13-5-30(c) and item #6 on page 3 of her written testimony and referred to page 59 of staff's submittal. The staff's analysis here is that TMT represents a series of trade offs. Astronomy is an identified use which is true. BLNR has approved over a dozen telescopes which is true. The TMT is needed because you need money to off set degradation. Basically it was noted that TMT is committed to paying a substantial amount for sub-lease rent in exchange for use of the site. The rent would be deposited in a fund only to be used for the management of Mauna Kea. This basically is to pay to degrade policy. There is no pay to degrade in the State rules. You don't have the option to allow somebody to pay in order to destroy the conservation district. To further make

this point, on page 62, fourth paragraph staff says environmental protections cost money. Protecting historic and cultural resources cost money. Education costs money. Maintaining public access and ensuring public safety costs money. Routine infrastructure maintenance costs money. I would like to note if you never built any of these telescopes a lot of that money would not have to be spent. To the second point, the staff highlights that already so much of the conservation district has been degraded. There is no option in the State regulation for you to forfeit protections because the conservation district has already been degraded. This is illegal. We shouldn't have done it in the first place and we shouldn't do it now. The staff acknowledges, the University acknowledges, a lot of people who are in support of the telescope acknowledge that we were right that our advocacy through the 90s like the audit that led to the University to re-think itself and come up with a new paradigm – we were right. If you have listened to us back then we would not have built telescopes on a recognized TCP, but because you didn't listen to us you did and now we are trying to scramble to figure how we are going to undo that. If we let 38 feet of the summit go we have to put it back. That is a bad decision and because we've made a bad decision we shouldn't have to make more bad decisions. Instead listen to us. We were right then and we are right now. We are telling you there is no new paradigm. The CMP is not comprehensive. The cultural resources, the environmental resources they are not being protected. Jobs and economic development are not part of the criteria that the Board shall consider in approving the CDUP. People are desperate for some kind of economic stimulation and she feels that, but this is not the way to do that. There are economic enterprise zones where you should be doing development to create jobs. Mauna Kea is not that place. I would like to note it's in the regulations that astronomy facilities are an improved use in the resource sub-zone. There is no exception clause there. There is nothing that says there all other protections notwithstanding you can build astronomy facilities. It says you can build astronomy facilities under approved management plan and these are the criteria you have to satisfy in order to do that. Just because astronomy is recognized as something that maybe permitted in a resource sub-zone. If it doesn't meet these eight criteria it still cannot be built. It's not getting out of the requirement clause. We do respect astronomy in all forms. If astronomy can be done in a way that can't destroy the earth it is all the more noble.

Kukauakahi Clarence Ching, a cultural practitioner on Mauna Kea testified saying that a number of people from Hawaii Island would've attended this meeting if it were held there. He related his personal background that he is here to protect his mountain and his practice upon it. Mr. Ching read from his written testimony and asked if the BLNR grants the CDUP and the appeal to the Intermediate Court of appeals is successful would TMT Corp. have an open and shut case for damages against the State for any amount of delay? Are we rushing the process? If you grant this permit are you going to put protections in for things that are out of your control? Like the granting of the appeal and because of this, BLNR is not ready to grant an unconditional CDUP at this time and shouldn't be. A conditional CDUP might work in the interim. He reminded the Board of their fiduciary responsibilities being the "trustee" for these so-called "ceded" lands and had concerns of TMT Corp.'s non-record of credit-ability, non-credit-worthiness, lack of substantial past history, lack of Standard and Poor rating, ranking and other issues. Why

the astronomers decided to operate as a corporation makes their decision to so somewhat suspect because doesn't incorporation provide a means for insiders – universities, associations, nations, etc. to be shielded from fiscal liability? This would allow these individual parties to possibly escape personal liability for their actions, non-actions, financial obligations, etc. Mr. Ching questioned who TMT Corp. members are. The process is not great because University of Hawaii – Hilo is the applicant or a third party. What happens and questions whether the permit is to the University or to TMT? Who is responsible and if TMT screws up does the University become liable? What would the contractual relationship be between the Board, the University and/or TMT? The relationship between these parties are lacking in this case. One of the members is University of California, but California is the leader in bankruptcy which results in the State of Hawaii at a disadvantage. He believes TMT Corp. doesn't have the funds to pay for this project. TMT Corp. has been recruiting China, Japan and India, but a country like India is affected by rising food prices. TMT has a long way to get this money together. These are stepping stones to even larger telescopes and asked that this CDUA be denied.

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Dale Hollands testified that he is a teacher at Waiakea High School on the Big Island who taught Chemistry and Physics for 20 years there. Waiakea High School has one of the top robotics programs in the State and he described one of those programs showing a couple examples to the Board. We saw the skill set the students were getting and was making them valuable in college as engineers. In Japan, all the contestants were college students and Waiakea came in first place. They wanted to sustain the program, but it was quite expensive. They met the TMT people where Mr. Hollands fired off a grant to sustain their program and TMT quickly replied that they could. He honestly thought our program would've died because of the expense of it. Seven of those students are at U.H. Manoa in engineering that one of them, Kelson Lau spoke here earlier. Mr. Hollands was glad Kelson spoke because he is going to change the world that he is an unbelievable engineering student and is of Hawaiian ancestry. TMT has helped them these past two years to attend the competition in Japan and without TMT's help none of this would have taken place. The money came with strings attached that TMT will support your program, but we want you to do outreach. Waiakea was excited to do this because it was to our benefit to train students that by the time they get to us they already have skills to build on. TMT enabled them to get materials and go to schools and Mr. Hollands described a toothbrush robot and others they invented. With TMT's help they did workshops on the Big Island and Oahu which went off like wildfire and is now in so many schools. Without the money to do the outreach his program would have died, but enabled them to get other students excited about engineering and robotics. When TMT says it wants to reach out to the community to enhance education and to build relationships, it has with us and through us we have been able to take this throughout the State. He described another project that the teachers are hungry for robotics and without TMT's help they couldn't do that. If the telescope should go through TMT will infuse \$1 million dollars a year into

education projects on the Big Island and when they look back it excites him to think that other teachers like him will have access to the resources. It is really hard on the Big Island to find money to sustain what they do there, but to sustain these engineering projects it takes tens or thousands. They are also going to the other neighbor islands with their brushbots thanks to TMT's funding for STEM education. He would like his students to come back home to work and as a resource for teachers.

Miwa Tamanaha, Executive Director of KAHEA testified that she is ashamed that until she was in the work she is in she had no clue what it might mean to someone to be Hawaiian. One of the great privileges is to have worked with young people and the opportunity to see them connect to the culture and their identity with the people in the world is affirmed. When you bulldoze the highest temple the highest church of a people we as a society are saying something of what those people are worth. I think it's an injustice. She is glad her daughter was with her today and that she wants her to have the opportunities to be an engineer or an astronomer, but she also wants her to be a Hawaiian woman in the world to be who she is designed to be. There are aspects of this work that can make you cynical because she has been there. She is a less cynical person because of Mauna Kea which taught her steadfastness, faith, about community and about hope which humbles her. It has taught justice and has helped her find her own voice. The questions today are moral ones which is why she wanted to share why she opposed this project and to deny this permit. Ms. Tamanaha wanted to honor all the people in the room who sacrificed on behalf of the mountain and also all those who cannot be here.

Kim Brentent testified that she is a student at UH – Hilo graduating this spring in physics and astronomy. She felt the TMT project requires analysis on many aspects and the one she wished to touch on is Mauna Kea's environment. Astronomy as a science is motivated by discovery, cultural sensitivity, impacts on the community and the future of UH-Hilo. Also, she studied astronomy because of the unique opportunities on Mauna Kea which she related and without them there would be no program at UH-Hilo.

Hanalei Fergustrom representing Na Kupuna Moku O Keawe, a gathering of elders from all six districts of the Island of Hawaii testified that the notice for these meetings is not being transmitted to all the islands and not just the Big Island. He believes there is a breach of trust by DLNR passing control of Mauna Kea to the University of Hawaii because the BLNR is entrusted with that protection and noted that the University is seeking autonomy which would make it even harder to address these problems. View planning, especially if you understand PASH talks about it but it's a matter of whose perspective. This particular project site is going to be in a very bad view plane for people like him who are the religious practitioners. Mr. Fergustrom related that he is with the Temple of Lono having had full training as a kahuna from Kahuna Sam Lono. The OMKM CMP is a self appointed and self serving document. No offense to anybody when he brings up offenses that it needs to be brought up and clarified. It is troubling to him at these hearings that they talked to a lot of kupuna and questioned which kupuna they are speaking to because old people don't necessarily mean kupuna. Mr. Fergustrom read from his written testimony and in summary the summit of Mauna Kea is: the realm of Po and Ke Akua, the home of Na Aumakua, the sacred burial grounds of our highest

Ali'i, is the spiritual center of the Hawaiian people, the location of the sacred life waters of Kane, the location of our sacred adze, where our ancestors enter the heavenly realm, where the gods take on earthly shapes, is the most sacred and religious site and forbidden to enter but to seek Ke Akua, conduct sacred and religious ceremony as well as being the top of our islands aquifer. There are signatures from over 30 kupuna attached to this document which he left with the Board. Another document attached questioning whether we are a state. He personally is constantly under the gun as he practices his religion as one of the few people trained as a kahuna and was told about the significance of Mauna Kea's summit region as the realm of Po. The reason there were no buildings there in the first place was because they weren't allowed to build there. It was considered kapu and in those days it was satisfied by taking your life. Mr. Fergustrom believes in science and supports it. Hawaiians were very scientific because history shows us that while Europeans were still falling off the earth Polynesians were navigating the largest body of water on earth. He heavily opposed this permit and should it go any further he would like to put his name as one of the contestants for a contested case hearing. Keep in mind that he only gets a thousand dollars a month and it costs \$500 to come here.

John Hamilton teaches astronomy and physics at the University of Hawaii -- Hilo testified that he supports the TMT speaking as a teacher, a father and a citizen and related his personal background that he came to Hawaii to work at the best facilities in the world which is Mauna Kea and lived there for 13 years. His wife and children are Hawaiian. No one person can speak for all Hawaii. We must strive to do what is best for the land, for the people and the keiki. We must strive to be pono and live pono and it's not an easy thing to do. He believes proponents and opponents share the same goal that we disagree with the methods of doing it. He knows several people who are opposed to it and he respects them and their opinions, however he disagrees with them. There are good and bad aspects that not all progress is good and there is much in the past that we must protect and nurture, but we must not live in the past nor recreate a static culture. The experts in olelo Hawaii understand that the language would die if it didn't develop and grow and it's the same as with astronomy and sciences. Traditional Hawaiian astronomy started as a calendar in navigation, but does not stop there and continues into modern astrophysics. It is part of the heritage of every Native Hawaiian to continue learning about nature using all methods and advances at hand. This is what we do today with medicine and is a continuation of the legacy shown by great leaders like Kamehameha who adapted western technology to further his goals and Kalakaua as well using electricity. Mauna Kea is sacred and he believes the peaceful work done at the observatory extends and continues this tradition of connectivity to the universe. We study the universe to understand our planet, our beginnings and our possible futures. The knowledge of Mauna Kea can teach the rest of the world about laulima. Since Hawaiian astronomy has been good to him he acknowledged the obligation to share and give back. Mr. Hamilton tries to use his life as a role model to encourage all local students to reach for the stars and pursue their dreams. He has since the increase of development of observatories on Mauna Kea, but at the same time seen the demise and shrinkage of jobs. Also, he believes our State's future well being lies in hi-tech jobs and not in hotels. The TMT project is good for Hawaii, his island, for astronomy and is the appropriate endeavor on Mauna Kea. It's recognized the multiple uses there that astronomy is a clean industry

although any construction will change the landscape it will do no more than that. Hawaii deserves the best and TMT represents the best in the world. Mr. Hamilton supports the TMT and bright future it will bring.

Chad Atkins from Puna, Island of Hawaii is a math and science teacher at Halau Ku Mauna Public Charter School at Makiki (Oahu) testified that he left his students with a substitute to be here today. Many testifiers talked about looking to the past about the history of telescopes on Mauna Kea. He described his grandfather, Jack B. Zurker, one of the world's premier solar scientists who came to Hawaii in 1959 to break ground for the first telescope in Hawaii staying for 18 years before finding a better job in America where he was named director of the National Solar Observatory of New Mexico and remained there for 20-30 years before retiring. Since retiring his grandfather has been writing books on astronomy. In 2005, he finished a book called an Acre of Glass that discusses the future of the telescope industry. His forecast begins with the prediction that Mauna Kea would be chosen as the site for a 100 foot wide piece of glass that could see farther into the universe than ever before. Then the industry would look to an acre of glass that would be four to eight times larger than the TMT. One day Mr. Atkins asked his grandfather why he liked astronomy and he said it's because we can't answer those big questions – are we alone?, where did we come from? By growing on the slopes of Mauna Kea and Mauna Loa, Mr. Atkins found those answers at a young age unlike his grandfather Mr. Atkins is rooted here in Hawaii and you see things differently. When you think of Mauna Kea you think of world class astronomy. When Mr. Atkins thinks of Mauna Kea he thinks of Wakea. He thinks of this piko in the center of the world's largest ocean. A piko that can heal the whole entire world, a piko that is equally capable of answering those big, big questions without catering to big businesses, polluting our water table, constructing on our beautiful landscapes and eroding our cultural foundations. If the concern is economics, he believes Hawaii can be an economic powerhouse as you want it to be. The industrialized world has an increasing demand for untouched spaces and spiritual grounding. We don't need to put telescopes here to get the world's attention nor to answer the world's biggest questions. What would be revolutionary, unique and make Hawaii special is if we decided not to and didn't develop our highest summits. We would be the one place in the world that gave a crap about conservation. As stated by TMT that this would be the last telescope on Mauna Kea and forever more will be held in conservation. Many have sat in the Board's seats before you as those in his (Mr. Atkins) and every time everyone has said it that was going to be the last one. Even from the first telescope when he asked his grandfather they thought that would be the only telescope. When we say TMT is the last telescope we should look at the longer genealogy of telescopes on Mauna Kea. We always think we are at the forefront, the future of technology, but in a few years it will be part of the story when people testify for or against the next telescope on Mauna Kea. Please follow your laws and don't sacrifice the people of the Pacific for dollars. Please be the first BLNR in favor of our land and natural resources.

Christian Kauhiokalani Blackshear-Anderson testified giving his genealogy as a Native Hawaiian teaching physics at the University at Hilo and distributed written testimonies from the Astrophysics Club who was unable to be here. Thirteen are in favor and one is

against where that one student is not Native Hawaiian and was not from Hawaii. The rest came from students of varying backgrounds most from the island and are all part of the community. The TMT would foster opportunities for K-12 students with resources and education. For college and high school students, internships; for college graduates, jobs and for the community as a whole the TMT would bring needed relief for the construction industry and provide needed jobs in the service and technical industries. TMT has shown an active interest in local education. He referred back to previous testimony on Waiakea High School's benefits and the Journey through the Universe program which he described. Teaching a class at Keaukaha, he couldn't stress more the interest and love of science these students have. TMT's action in the community has shown they need to capture this and maintain the interest of our children. To take children from an interest in science to a role in it, this is his goal. As a Hawaiian, he understands his culture has a rich history of discover and exploration. TMT is a natural continuation of that drive to pursue frontiers and hope the Board will approve this.

Noa Helela's little sister came up and testified that she does not want the telescope because it's taking over the land of those little wekiu bugs and while people are building those are disappearing. The land belongs to the goddesses and little spirits that she will love forever.

Kehau Kimura greeted and introduced herself in olelo Hawaii and testified that she was here as an individual with long standing connections to Mauna Kea being born and raised in Waimea she related her family lineage and relationship to the mountain that they have maintained to today. Mauna Kea is important to her family not just as Hawaiians, but as lineal descendents intimately tied to the mountain. She also has the responsibility of serving as Executive Director for the Imiloa Astronomy Center as part of the University of Hawaii at Hilo. Imiloa is not a science research institution, nor a cultural museum. Imiloa exists out of the need and desire of a community vision that there be a place dedicated to educational outreach that's built on a foundation and mission rooted in bringing together both science and culture and they do this by sharing from a scientific and a Hawaiian cultural perspective on our role, place and understanding of ourselves within this universe. Through this perspective Imiloa is striving to achieve a well rounded view of science through a Hawaiian perspective which is very inclusive of our local culture as a whole in a way that makes relevant science and culture. It's about bringing people together on a common vision empowering the entire community. Imiloa, as part of a greater Hawaii Island community effort is an advocate for astronomical and scientific studies through significant and relevant participation of the Hawaiian and astronomical community. By this participation that is fundamentally changing the way science and research is conducted on our mountain. More of our people are getting involved. As a result of this, there are now measures in place to ensure cultural, environmental and scientific protection of Mauna Kea. And there are measures to ensure that our local community is participating in not only as a token participant, but are leading the efforts. There are significant measures being done to education to ensure the entire opio, our keiki, will be the next leaders in science and engineering and in doing what is being done on the mountain to ensure it is done in the proper way. For this reason is why she supports the TMT and she believes TMT understands that residing atop

Mauna Kea is not just about getting the best science, but is about supporting and advancing our island as a whole. TMT has remained consistent in the commitment to the community because they are being affected by this project having invested significantly although uncertain of their location. TMT has given a lot to the community through education and programs. We need to look ahead for the future of Mauna Kea and what it stands for and to Ms. Kimura it stands for a leader for our people. Given our Hawaiian history of progressive global leadership which is about malamaing, protecting, caring for what is here, what is Hawaiian and because of that it draws interest from the rest of the earth. She finds that hard to believe that her ancestors would deny this opportunity for her people and she thanked the Board for their consideration of TMT.

Leon Noeau Peralta testified that many people were not here today and was humbled to lend his voice to this cause. He gave mahalo to those who dedicated their lives to this cause for caring for Mauna Kea. Then he related his background and family background from Hamakua, Island of Hawaii. Mr. Peralta urged the Board to deny the permit which would be built on the summit of their kupuna who without them he would not be here today. It is stated clearly in the TMT permit application that the TMT cannot satisfy the eight criteria previously mentioned because from a cumulative perspective the impact on cultural resources has and will continue to be substantial, adverse and significant. This project would permanently impact the integrity of the cultural and natural landscape of our sacred mauna. He asked the Board to remember that the entire mountain is a significant site and building at its summit affects everything beneath it which our kupuna understood. These are summit lands at the summit of a mountain designated as a conservation district for that purpose of conservation and protection. In doing so you would also impact the physical and spiritual well-being of Hawaii's people. Mr. Peralta asked the Board to consider the long term, cumulative impacts that this construction project and others like it will have on future generations. He asked what will the children be left with after the mountain has been scarred by the shortsightedness actions of those who came before them or will they also drink of the waters that our kupuna left to us. Our legacies could forever alter the course of history and the question is in what way do we chose to do so. To uphold the laws the Board should deny the request.

Celeste Hao testified that she was born and raised in Hilo, Keaukaha and Panaewa who is a Program Assistant at Imiloa Astronomy Center and a senior in the Astronomy Program at UH – Hilo. She described how her interest in astronomy started relating her goals and the criticism, but her parents support her. A man asked her what type of Hawaiian are you as to say she had betrayed her culture, her heritage, her legacy and her people. She had a hard time with that and felt like giving up, but remembered their ancestors ability to find tiny islands using the stars that because they could do this they had science integrated in them and this is the connection of science and culture. Ms. Hao decided to be the one to build that bridge for her and future generations. She wants to build opportunities for her children which is why she supports TMT.

Shelly Morioka testified asking to deny the CDUA for the TMT. She found it offensive that telescopes are an extension of the practices of our ancestors. The telescopes on Mauna Kea have irreversibly changed the landscape that orients our kupuna to this earth

and to the universe. A decommissioning plan will not and cannot restore the area to its quality before the building was imposed. The original lease given in 1960 which runs to 2033 permits "an observatory" which indicates a single structure. The development on the summit has far surpassed the allotment in the original lease and how is it that we are facing another telescope proposal. The good news is the law is on our side. There is no way an 18 story building is going to enhance or preserve the natural beauty and open space of the summit. The criteria in HAR§13-5 by which you must decide on this application requires that this project do so and it simply does not. The goal is to preserve the natural beauty of this place. Please don't allow anymore construction to go on there. Ms. Morioka has participated in traditional ceremonies on Mauna Kea and she is sad that she wasn't able to experience the summit before it was altered by telescopes. She asked to deny the CDUA and she felt this project was frivolous. The conservation land was stolen crown lands and should be conserved. Development runs counter to this mandate. Also, she reiterated previous testimonies regarding the process of contested case hearings and that this meeting was not held on Hawaii Island.

Wallace Ishibashi born and raised in Keaukaha testified apologizing if he should offend anyone here. He is a Hawaiian who loves his culture and he supports this project. He related some family background and how they are tied to Mauna Kea. Mr. Ishibashi represents the ILWU (International Long shore Warehouse Union) and is the Big Island Labor Alliance Chairman representing all the unions and trades on that island. He also represents AUW and the Geothermal Committee. This is about jobs and everyone is experiencing hard times hoping to find comfort for the children of his members where they are scrambling to find food and they appreciate any job they come across. This is all about working families. He related his grandson's interest in astronomy that this project will educate all communities which is important. No disrespect to the Hawaiian community because the kapu system is over, its pau already. The desecration of the mountain happened in the 1960s. You got to adjust with the times. We have to. When he went down with his grandfather to Miloli'i there were 25 canoes and he told him that there used to be hundreds of canoes. When he takes his grandson down there now there are no canoes. They used to fish on canoes when he was small. We need to take the opportunity to expand beyond the hotel industry because we have to. He believes the TMT will enhance the hotel industry by bringing in more people to learn about our island. Mrs. Ishibashi related a story that Jesus left the earth from the summit of Mauna Kea and it is not the TMT site. Need to respect everybody.

Megan Lealoha Na'au testified relating where her kupuna came from on Hawaii Island although she is born and raised on the windward side Oahu. She is a kanaka maoli, cultural practitioner and a graduate student at Kamakakuokalani - Center for Hawaiian Studies at UH - Manoa who strongly opposes the TMT and urged the Board to deny the permit for this project. The TMT management plan admits that these facilities will continue to have substantial adverse and significant impact on the cultural and geological resources on Mauna Kea which directly contradicts HAR 13-5. To put financial gain, job opportunity and economic progress above the protection of the environment and the culture of the native peoples is a reflection of the moral sense of society. Too many decisions have been motivated by money and power at the expense and direct destruction

of the environment as well as native species, animals and indigenous peoples' homes. Mauna Kea is not meant to support us monetarily. It is pono for us now to begin to place survival on the protection of environment and cultural on a higher plain of value than the cash in our pockets and job security in our own lifetime. The future deserves far more considerations. In terms of job need and economic crisis she asked to consider finding better ways to spend \$1.3 + billion dollars. There is much work to be done to make Hawaii a self sustainable place which includes infrastructure and jobs to ensure we can farm and feed ourselves. The TMT project is hewa and the only pono thing to do is deny the permit.

Katherine Burke testified that she is a public health student at U.H and opposes this project. As a scientist she is passionate of the truth and knowledge. She thinks it's with arrogance that the science community assumes the value of the knowledge that they pursue on Mauna Kea. Recently geologist, Donald Swanson, was humbled by the inadequacies of his field to uncover truths about the history of Kilauea and the knowledge established by Hawaiian oral tradition or mo'olelo of Pele and Hi'iaka. Those stories yielded greater scientific accuracy about the history of the volcano than could be revealed by even the most advanced geological technology. It is with arrogance that the scientific community assumes superiority of their scientific questions and ways of knowing. With respect to the proposed action on Mauna Kea, how can we be so sure of the necessity of this development to our scientific pursuit of truth and at what cost. Ms. Burke referred to the previous testimony in opposition that it is at great cost to Hawaiians. As a scientist, she believes arrogance occludes truth and that any scientist truly in pursuit of truth shall have the humility to question continually the basic assumptions of their field particularly when their hypotheses are met with such strong opposition. As a student at U.H. she understands this project will create 100 full time positions where she related how her office has no paper, no wireless network and no IT person. Ms. Burke opposed the allocation of more resources away from direct services to students and into a project that most students have nothing to do with and will not benefit from. As a community member she asked the Board to uphold HAR that oppose substantial adverse impacts to existing natural resources to the surrounding area and community and to take seriously the TMT management plan that confirms the inevitability of these consequences.

Laulani Teale testified she works as a peacemaker with Hawaiian families, cultural practitioners and people who are trying to find solutions. She believes strongly in peace and non-violence, but at the same time she cannot speak as a peacemaker today and the reason for this is in order for there to be peace there must be pono. Relating when she teaches peace the word is pono, making things right and she hopes this Board will make things right and then they can work on peace. Ms. Teale has a masters in Public Health and related that stress and the aina (land) for all people because we are all connected. She is concerned about the health of some people who spoke earlier that we need to support them so they can continue to work that benefits all of us. If this permit gets approved that means we are going back into a long hard battle which will be a fight on every level where it will be in the courts, in this room, out on the streets, up on the mountain, out in the communities, in the media and that is not good for anyone nor for our future generations. We need to understand what kanaka maoli is which is a

continuous line going back from the time before anyone can remember. It goes forward to now and continues to go forward and everyone, it doesn't matter where you come from, but if you stay and your future generations are here they become part of that line too. We have to make a decision for them, for those people who are going to be all of our descendents – physically or spiritually, that is what we need to do. Ms. Teale appealed to the Board to protect the land and the natural resources because that is what the Board is here to do. This is not the Department of Economic Development because this is not what this Board's job is. Education is important, but this is not the Board of Education. This is not the Board of scientific research. As important that is to all of us that is not what this Board is here for. This Board is here to make a decision on the land and the natural resources that we all depend on and that goes to everything that goes to that land. There is a request to excavate thousands and thousands and thousands of meters of very fragile land which is the request before you and to build a stadium sized building on that land in a very fragile area. That is not a request to further education or science, astronomy or culture that is not what the question is. The question is are you going to protect the land, the water – sacred waters that are under there? Lake Waiiau connects to waters under the ocean that flow not only through Hawaii, but thousands and thousands of miles from us. Those are very, very sacred waters. Ms. Teale is also a la'au lapa'au student of Papa Auwae who taught that Mauna Kea was where sacred waters were gathered. The request before you is to dig into the land, down several stories in order to construct whole intent for toxic chemicals and sewage. That is the underground work involved in this work. How does that affect water, the waters of Mauna Kea and the land? This is a glacial area in the Pacific Ocean. How many of those can you find? This is the last plateau. She finds the work important that astronomy is awesome. Our kupuna has been doing it for thousands of years and that is how we got here. Ms. Teale admires the astronomers work, but if all of us are raised on basic pono from whatever culture we come from the one thing we should have learned from our kupuna is when you do something do it right. In the past astronomy involved sitting on the mountain looking at the stars and we know that is capable of very powerful things and we still do that today. With telescopes if that is an improvement that's great as long as you are not also doing damage in the process. Being on the mountain observing doesn't do damage to the land. If you can continue that great, do it, which she supports what the astronomers are doing, but do it right and do it without harm to the land, to the people, to everyone. She supports the dreams of the scientists and they should have the ability to actualize those dreams without this hewa. Without this feeling they are destroying somebody's culture and sacred place in the process. She believes they can do it because they are smart people and she looks forward to the day when they come before the Board to do exactly that. Until then it is the Board's obligation to make a decision based on the good of the land.

Chairperson Aila noted that the Board had received a number of written testimonies and closed public testimony.

Member Morgan asked staff to restate the amended motion. Mr. Lemmo said he did pass something out. There is a statement in the TMT management plan, the CDUP that indicates that TMT would be setting aside funds annually to allow for observatory

decommissioning and site restoration in the future. He presumed should they be successful in getting a permit that they would begin that process. Mr. Lemmo wanted to make sure it was also made a condition of whatever the Board approves. Member Edlao asked whether that was different from a performance bond. Mr. Lemmo acknowledged that the specific instrument is to set aside funds for decommissioning is not articulated completely at this point. That may be a question you may want to ask someone representing TMT today who is qualified to answer that question.

Member Pacheco asked the TMT management plan, is that something they don't have in the submittal and wondered whether that is something the Board needs to approve or can it be referenced in you're changes to condition #7 that the conditions under that management plan would also be conditions preferred. Mr. Lemmo acknowledged that the TMT management plan is part of the CDUP. It was reviewed and we solicited input on it. It's part of the application process. It was not attached to the staff report and therefore proposed a condition to specifically in addition to the CDUP approve the TMT management plan including the specific management actions articulated in that plan. Member Pacheco asked if they didn't approve that today would that be something that would have to come back in the future. Mr. Lemmo said I'm not sure why you'd do that. Member Pacheco said I'm just wondering why you want the language in here that we're approving the TMT management plan as opposed to....Mr. Lemmo said frankly you could approve the CDUP and I think it will be included in that approval, but because in the past when staff brought management plans before the Board there has been a practice of approving the CDUP and the management plan that we didn't want to leave any questions unanswered. I don't think it is something you have to defer if you so chose to make a decision today on that.

Member Pacheco said he had some questions that are addressed in the submittal, but wanted to have it on the record based on testimony that came up. Regarding the question for contested case hearing where people testified that the contested case must happen before a decision can be made by this Board whether or not the testifiers' only option is to defer or deny. He asked to comment on that. Mr. Lemmo said we have old rules Chapter 13-1, Rules of Practice and Procedure which have a section on the conduct of contested case hearings. Under these old rules which are no longer in effect and have been replaced, an entity could ask for a contested case hearing at the required public hearing for the project which occurred long before this came before this body. The practice had developed of having a contested case when somebody asked or a contested case at the public hearing for the CDUP which is long before a decision is made. The rules were changed about five or six years ago which essentially seemed to now allow the Board to make a decision even with a pending request for a contested case hearing before you. Should a contested hearing be required or be held after that you then go through that process and it would come back to you (the Board) again and you would rule on that. Member Morgan said and as I recall that specific issue has already come before the Board in previous meetings. Mr. Lemmo said when people comment on we did that and we did that there were practices certainly, but this has to be evaluated in the context of what rules were in effect at the time of that practice and what rules are in affect today.

Member Pacheco said another issue brought up by several testifiers concerning sub-division or sublease and the other issue of the lease stating there is one observatory limiting observatories on the mountain. Mr. Lemmo said as to the subleasing there is no sub-division taking place as part of the granting of a sublease by U.H. to a telescope purveyor. Therefore, it's not something that the Board would have to rule on because it doesn't constitute another land use. As to the issue of an observatory, I don't know. I don't have that language in front of me.

Chair Aila referred back to the earlier question on the method of funding for a decommissioning plan and asked whether that was defined. President Greenwood said we don't have it and it will come before you the actual terms of the lease because that would follow the permit process. Another gentleman (Michael Bolton) explained that we recognized in the CMP that we have a decommissioning plan and they have a strong operating budget developed over the last three years and they have money in escrow annually in anticipation of government decommissioning of telescopes. The caveat is we don't really know what that is. It's not easy to understand what it takes to restore the sites. We have some estimates that you can make of the telescopes that we've scaled.

Member Edlao explained that a performance bond is like insurance that you purchase that ensures there is money at the end should anything happen, but you are saying you are going to be putting money in annually and after five years something happens and you disappear there is not enough funds in there. That is my concern. If this is going to be discussed in the lease then so be it. I'll wait until I see the lease. Mr. Bolton said that is exactly those conditions laid out to default.

Member Goode said the sublease won't come before the Board. He did read in the report which said the lease amount (which will be discussed later) will be a substantial amount and that the funds will be deposited into the Mauna Kea land fund. I would like to know what substantial is, maybe a rough estimate and I would also like to know who has this fund, who is in control of this fund and what would the funds be used for. Mr. Lemmo said those are excellent questions. I think probably the applicant or OMKM could make some attempt to answer that question. Barry Taniguchi said he is not an expert that he is with the MKMB where they worked it out in laymen's to make sure things were done right. If I could go back to the performance bond question where a lot has to do with whether there is an insurance company that is strong enough and willing to take that issue. Yes they can have a performance bond, but if there is no insurance company out there that would take it your dead. We cannot do that. It has to be something that has to be looked at. The annual set aside of monies is referred to as a sinking fund. If you look to bond funding and refunding in the State and the County when they issue bonds they set up sinking funds to make sure that the bonds can be retired at a future date which they can do annually by putting "X" number of dollars into a fund so at the end of the term they have enough dollars to pay it off. I think what Mr. Bolton was talking about they were going to start that sinking fund. Sinking funds will be set aside in an escrow which will be in a trust fund that they don't have access to, but they will put into it to build the fund if they are not able to get a performance bond. Even if that is the case the performance bond could still be negotiated on a declining value. In other words, if it's

estimated to take \$5 million, just using numbers as examples, and let's say it takes \$10 million to take the facility down you might be able at the beginning to do a \$10 million dollar performance bond as you put your funding aside you can reduce the value of the performance bond just for the deferential. That has to be worked out yet, but I think the intent is, yes there is some funding mechanism and I don't think there was any answer to that yet. Member Edlao agreed with Mr. Taniguchi that insurance may not want to take that on and the effort of the sinking fund he talked about does make sense.

Mr. Taniguchi said he cannot answer what substantial is. I can tell you what in my mind substantial is, a million or \$2 million dollars a year which is a lot of money. As a member of the MKMB I feel a responsibility to properly manage that mountain. Granted I don't work for the University. I'm a volunteer. The seven members of our Board are all residents of the Big Island and we take our duties seriously. We have had disagreements with prior University administrations about how things were handled. We told them if you don't change we are going to get out of here because we don't want to be held for when things go up. Talking about the rent where in my mind substantial \$1 to \$2 million dollars a year which would help fund the OMKM to help manage that mountain. Up until now it wasn't really done. There is no funding source other than the University getting general funds to pass on to the OMKM. Act 132 cleared it up. The other year when that was passed we got the authority to generate and propagate rules to adopt rules to manage the mountain. The requirement of setting up a special Mauna Kea Land Fund was set up by that. Tell the Legislators don't pull back the special funds because that is where our money is going to go into to help manage that mountain. It's granted under the OMKM but those funds are going into those accounts and that account will be used to manage the mountain. Please tell them not to pull the special funds. Chair Aila said they could suggest that.

Member Agor said that we had a couple Hawaiian practitioners testify today and asked Mr. Lemmo to reinforce his comfort level that the Hawaiian practitioners are not going to be deprived of doing what they do up there. Mr. Lemmo said that gets back to two basic issues. 1) There is an issue of space. The University is talking about using six acres or five acres for the observatory site. That space will be taken off the table in terms of people having some place to go and practice their traditions. But, you have to understand the science reserve is over 11,000 acres so it's a very small fraction of the overall area that is still reserved for Native Hawaiian practices. On the other side of the coin is to some that may not matter. It's an 18 story structure and the sight of it has a diminishing effect on their cultural values. That is a more difficult problem to resolve. However, our point was that we felt that this was the best possible site for the facility and there was a lot of excellent mitigation, site project specific mitigation measures that had been suggested. So we felt that the project met the burden of not having a substantial adverse affect. That is the crux of our recommendation that it doesn't rise to the level of substantial adverse.

Mr. Taniguchi said he thinks the issue of accessibility is not only on this five acre site that they are talking about the whole area, the science reserve as a whole. If you look at one of the four sub-plans, the public accessibility sub-plan they do not intend to limit

access to Mauna Kea unless there is a safety issue. We don't intend to put a gate up and close it every night or things like that. We're hoping accessibility will be managed better through education. Teaching people what the affects are don't go up. But I think we also have to admit though when it snows up there it's bad. You may not have seen an image of a snow day up there when you see a whole line of cars back. The mountain access road is a one lane road and you got a line of cars waiting to play in the snow and you can't control traffic which is bad. The accessibility issue is the only way when it becomes an issue of safety that they will close access. Other than that everybody has access. What Mr. Lemmo is alluding to on that particular site there will be accessibility denial only because the building will be there, but that does not mean that other sites within Mauna Kea will be denied to the practitioners. They could still go on the peak, they could still go on the ridge, they could still go to other areas and we are not going to deny them of that.

Chairperson Aila asked in terms of testimonies presented earlier within the cultural resources plan is there the ability or is there the opportunity to have a resolution process so that practitioners that go up there are asked first before they are photographed. And two if there is an agreed upon access site to do a certain cultural practice there is some protection to the structures that are part of that process so is there?

Stephanie Nagata said the CMP does address the cultural resources management plan and the CMP does address how Kahu Ku Mauna, our Native Hawaiian advisory council has been tasked to look at some of these issues. Whether or not there should be a dedicated site where individuals would want to go to exercise their traditional and cultural practices would need to be something that they would need to consult with other organizations and groups on whether that would be a good thing to do. Or whether we would leave it open where people would want to go or feel they would like to go with certain reservations because there are certain State laws where you cannot go to a historic property such as a shrine and desecrate it. That is protected by law. There would have to be some kind of guidance that is provided by Kahu Ku Mauna to deal with those kinds of issues. Chair Aila said for discussion say there is some individual or family that continues to take their piko or iwi up there and that site is somehow monitored so there is no accidental destruction of that site. Ms. Nagata acknowledged that one of the concerns they have when they did the archaeological inventory survey is the number of fine spots that had been found up there and fine spots is a term given to a site that they don't know, it's obviously modern, but they don't know its function or its age which is another issue Kahu Ku Manu is dealing with. How do we manage that because we want to be able to protect and monitor those sites where a family wants to set up a family ahu or a shrine we want to be able to protect that, but we can't tell now whether this was done with some purpose or was done by someone who came from Idaho and decided to stacked rocks that is a tough issue that the council is trying to work out.

Chair Aila asked what is the methodology for the council to interact with practitioners. Ms. Nagata said they haven't worked that out yet, but it is part of the CMP that they are required to consult with other Native Hawaiian organizations and groups.

Member Edlao asked her to define historic properties. Ms. Nagata said historic properties is one that is over 50 years in age and can be a shrine and could be something that is western that they did find an old geological survey camp site. Most are shrines.

Mr. Lemmo said that these are all issues articulated in the CMP and the cultural resources management plan. Kahu Ku Mauna plays an important role addressing these types of issues. Chair Aila asked the requirements for consultation is something that will be required as part of the amendments to the issue as well as staff's recommendation. Mr. Lemmo said that gets into construction and operation that will have to be separate from the CMP and responsibilities of OMKM who are responsible for Kahu Ku Mauna to consult with practitioners to work our appropriate protocols. Chair Aila asked as part of the conditions its being incorporated. Mr. Lemmo acknowledged that.

Member Edlao noted there was a list of 31 practitioners and didn't know whether they were ever contacted or not and suggested making a copy of that list and keeping those practitioners in the loop on what's happening and get input from them in developing access. Ms. Nagata agreed that they would love to have that.

Member Pacheco said one thing that is important for us in consideration is that there are larger issues dealing with the whole overall management of the mountain that there's been a lot of process it's gone through to deal with those and the CMP is the apex of that process. But in this particular instance the question of this application is we have a lease that's been established by previous Boards and astronomy precinct on the mountain. It's easy to bring these other elements in and looking at that it comes down to the core of it we need to ask the question does this application meet the requirements under our conservation district use laws and the intent of the lease we have established. He doesn't believe it's our job right now to address those larger issues of the appropriateness of an astronomy precinct of being on the mountain. Its there and that is something we have legal agreement with under the lease. In consideration of this application how does it fit into that lease with our own rules and statutes that we have?

Member Pacheco made a motion to approve staff's recommendation with the list of amendments submitted by Mr. Lemmo - five additional amendments with changes to condition #7. Member Morgan seconded it.

Member Edlao said like the MKMB we take ourselves seriously. It's an open, not very comfortable spot. Like what my colleague said it's already here and we have to deal with it. You don't want to live in the past and do it now for future benefits. It's very elusive. However, with strong reservations, he supports the motion and encouraged you to work with the practitioners, get that list and keep them in the loop, get their input and try to minimize as possible.

Member Morgan thanked the staff for a very comprehensive submittal and thanked everyone who came to testify with differences of opinion, but agreed with the Board members that this is an existing precinct. It is not something we created. We have a lot to follow. It is consistent with what has happened in the past and he supports the motion.

Member Agor said that he knows the Board appreciates the Hawaiian culture folks coming out whether or not they were for the project because that helps facilitate developing the management plan and he thanked them.

Member Goode said he enjoyed the testimonies today. It was the most articulate, passionate and that the folks on Maui could learn from the folks on Big Island today. I was really impressed on a number of levels. I think the OMKM has a lot on their shoulders here – reading the testimonies and the report. Like what Member Pacheco said we have certain responsibilities in the constitution and in the rules and the eight criteria we have to look at mentioned by some of the testifiers. Criteria 6 is one where there are a lot of ways to look at it. The existing physical and environmental aspects of the land have to be improved or at least stay the same. Looking at that piece of land what is going to change right there where the site is. If you look at the entire context in the staff report indicates it's a system of trade offs. One of the trade offs is to shift some of the responsibility to OMKM which is why I am curious about where that money would go. It recognizes the four sub-plans we passed earlier that OMKM will have to wrestle with and is going to have to address some of these. Certainly, the decommissioning plan is part of improving the scenic, natural beauty, open spaces, etc. When he is looking at the criteria this is the one he'd be wrestling with and focused on today. He thinks this is the solution the way it has been set up. He thinks the University has certainly learned and we have to learn from the past. He learned there were mistakes made. Everybody made a commitment to not repeat that and he would forward the motion.

Member Pacheco said he was on the MKMB before he was on the Land Board. He visited the mountain a lot and he has been up there hundreds of times. He loves it in a very deep way because it speaks to him. He thinks one of the things that we've formed over the years and decades, people brought these issues for the mountain there is a complete different societal cultural look at the mountain. If that lease in the 1960s came to us today he didn't think it would have a chance of being put in place. In the context of this Board because none of us will be there in the future will have to deal with the issues of an extension of the lease coming up in 2016 and this lease expires in 2032 which is not a long way. There will be much different discussion about the future of the mountain at that point.

Chairperson Aila took the vote. All voted in favor.

The Board:

Approved the addition of five amendments and amended condition #7 as follows:

- **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 and Outreach, Astronomical Resources, Permitting and Enforcement, Infrastructure and Maintenance, Construction Guidelines, Site Recycling, Decommissioning, Demolition and Restoration, Future Land Uses, and**

Monitoring, Evaluation and Updates. These management actions and their associated mitigation measures are incorporated as conditions to this permit.

- **(Amend condition #7) All mitigation measures and management actions contained in the Historic Preservation Mitigation Plan, Construction Plan, Historical and Archaeological Site Plan, Maintenance Plan, Arthropod Monitoring Plan, are incorporated as conditions of this permit.**
- **TMT will set aside funds annually in a sufficient amount to allow for the observatory and access ways site restoration.**
- **Daytime activities at TMT will be minimized on up to four days per year as identified by Kahu Ku Mauna.**
- **If a contested case proceeding is initiated, no construction shall occur until a final decision is rendered by the Board in favor of the applicant or the proceeding is otherwise dismissed.**

Otherwise, staff's recommendations were approved as submitted.

Unanimously approved as amended (Pacheco, Morgan)

Item K-2 Request Decision-making by the Board (a) On its Own Motion to Hold a Contested Case Hearing or Grant Requests by Mauna Kea Anaina Hou, Fred Stone, KAHEA Environmental Alliance, Kukauakahi (Clarence Ching), and Sierra Club for a Contested Case Hearing, and (b) Appoint a Hearings Officer and Delegate to the Chairperson the Authority to Select Said Hearings Officer to Conduct All Hearings for One (1) Contested Case Hearing, with Respect to Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope by the University of Hawaii at Hilo, at Mauna Kea Science Reserve, Ka'ohē Mauka, Hamakua District, Island of Hawai'i, TMK: (3) 4-4-015:009

Mr. Lemmo noted that he did get a note from Fred Stone. He was not a perspective party in a contested case hearing so he would not include his name amending the report to remove his name from the report.

Member Goode asked whether there were any testifiers today that mentioned they wanted a contested case hearing that are not on the list. Mr. Lemmo said he think there was one, Fergustrom. Chair Aila clarified that with Mr. Fergustrom. Member Pacheco said there was digital testimony that was forwarded to the Board that he believed there was a petition by the Royal Order or is that not correct. There was some discussion between the Board, Mr. Lemmo and someone from the public. Mr. Lemmo said there have been oral request made by the people on the staff report in the public hearings and in the

follow-up written comments received they wanted a contested case hearing. Staff wrote to the people on this list as part of this process staff told them that they would need to make a petition now to be a party in a contested case hearing and that they would have to file the petition within 10 days in accordance with the rules of practice and procedure. The comments they gave us in writing and oral request are not petitions. The petition still needs to be submitted. Mr. Fergustrom, Kealoha's group, KAHEA, Mr. Ching will all have to file a petition with us. Member Pacheco said we're basically approving an action on a contested case hearing, but the petitions aren't filed. Mr. Lemmo said that you can do whatever you want, but what staff is proposing is it's possible that there could be a contested case hearing on this action. Staff is saying knowing that train is coming down the tracks the Board on their own motion order a contested case hearing. What would happen then staff would go out hire a hearings officer, the hearings officer will review all the petitions that staff will receive in the next 10 days and they will have a hearing on standing and that hearings officer would decide whether the petitions have standing to be a party to a contested case and what parties don't. He would hold a contested case hearing with the parties that qualify. For the ones that don't qualify, staff would come back to the Board that these have been looked at and don't qualify to be parties in a contested case. In the meantime, the contested case would be on-going with the parties that do qualify with the hearings officer. As an alternative this report is saying grant the request of the parties in this staff report or you can do nothing and defer the item. Chair Aila asked everyone listed on the staff report has requested either orally or by written petition.

Someone from the public asked whether a Kalani Flores sent a written request yesterday and Mr. Lemmo confirmed that the Board and staff have a petition from Mr. Flores. The problem with Mr. Flores is he is not here to make an oral request for a contested case which is a requirement of the rules of practice.

Deputy Attorney General Pam Matsukawa asked whether there was a filing fee. Mr. Lemmo said no. Chair Aila asked can we accept Mr. Flores testimony as a request that came in as part of this process as an oral request for a contested case hearing. Ms. Matsukawa said I think you have that discretion.

Ms. Townsend spoke that she knew at least three people who submitted written requests like Mr. Flores asking for contested case hearing. Chair Aila said that is the item before us now. But, Ms. Townsend said she was afraid to do that because she is not sure. Her recommendation is to make a motion to make a decision based on your own motion that a contested case hearing be held. Leave it up to these people to submit their petition within 10 days with their \$100 fee and have a hearings officer decide who has standing or who doesn't. Chair Aila noted that is what Mr. Lemmo suggested. Ms. Townsend suggested if you make a decision based on a list of names you are probably missing one and an additional three.

The Board and Mr. Lemmo decided to take Fred Stone off the list. If he wants to come back he can come back. Chair Aila said make sure to notify him that he has that opportunity to respond within 10 days.

Member Pacheco suggested a motion to further request to run a contested case hearing including the individuals who've submitted written testimony or oral request previous to this meeting and asked would that work. Member Morgan said and have the hearings officer address the issue of standing.

Mr. Lemmo suggested on its own motion order a contested case hearing. Approve staff to hire a hearings officer, delegate the Chairperson the authority to bring the hearings officer in and let the hearings officer run everything. Everybody who is on this list in the submittal has made oral requests for contested case hearings. All they got to do is follow-up with the written petition. He presumed Mr. Fergstrom will follow with a written petition and now there are couple more people who have asked for a contested case hearing and will have to file their petitions. He wouldn't act on the requests for specific personal organizational requests for contested case hearings at this time.

Kealoha Pisciotta testified that the problem is if you vote to approve this contested case hearing according to the rules you are obligated after the findings of the hearings officer to take an action within a certain time period. She asked if the hearings officer comes back after reviewing the facts and evidence, conclusions of law and finding of fact, she recommends that the Board does not approve the permit for the TMT. How will this body act? Will they rescind the permit that they just approved? If in fact within the 30 days because they have 30 days to bring this before court the final decision, if after that 30 days the bulldozers will begin to move, how will this body while they are in contested case hearing and in the court because that is where they will have to go right? How will this body prevent irreparable harm? This is why we are saying that A must go before B that contested case hearings is to present facts and evidence. Chair Aila said that with regards to the bulldozers one of the conditions of the CDUP they just approved is that no construction can begin until the contested hearing is adjudicated. Mr. Lemmo said final decision making has been made. Chair Aila said there are no bulldozers up there. There is a difference of opinion on how those rules are applied. Ms. Pisciotta agreed which will be figured out by the court. Still the purpose is to allow the decision makers to make an informed decision and you can't make an informed decision unless you have all the information at hand that is why we are suppose to have the contested case hearings before we have decision making because a contested case hearing is not a motion for reconsideration. Member Pacheco said that this body makes decisions all the time that can go into contested case hearing and comes back to us right away. Ms. Pisciotta agreed that they sued and won, but we are asking that you don't burden us anymore. We are already in the Intermediate Court of Appeals and this entire document is based on that document which the courts are reviewing. The Courts rule on the rule of law. The Executive doesn't right? Chair Aila said we agree to disagree. Ms. Pisciotta said the court will sort it out.

Member Pacheco made a motion to go forward to approve the contested case hearing and for the Chairperson to appoint a hearings officer. Member Agor seconded it.

Member Goode asked to clarify the parties to the case will be all parties that made either an oral or written request and followed up with a petition and a filing fee within the statutory time frame whatever they are. Mr. Lemmo acknowledged that.

Member Pacheco said there maybe some who are not here in person that submitted written testimony prior to the meeting counts as oral. Mr. Lemmo agreed.

Chair Aila took the vote and all voted in favor.

**Unanimously approved as amended (Pacheco, Agor)
Amend staff's report by removing Fred Stone.**

**Item D-4 Approve the Withdrawal of Approximately 1,401.91 Acres from
General Lease No. S-4471, Parker Ranch, Inc., Lessee, Parcel 5,
Government Lands of Kaohe III, Hamakua, Hawaii, Tax Map Key:
3rd/4-4-15:02 (por.);**

**Approval in Concept of the Set-Aside to the Department of Land and
Natural Resources, Division of Forestry and Wildlife, of such 1,401.91
Acres for Addition to the Mauna Kea Forest Reserve, Grant of
Perpetual Non-Exclusive Easement in Favor of DOFAW over a
Portion of Approximately 337.741 Acres of Remaining Lease Lands
for Access and Utility Purposes; and Issuance of Immediate
Management Right-of-Entry, Parcel 5, Government Lands of Kaohe
III, Hamakua, Hawaii, Tax Map Key: 3rd/4-4-15:02 (por.); and**

**Consent to Extension of Lease Term, General Lease No. S-
4471, Parker Ranch, Inc., Lessee, for Approximately 337.741
Acres of Remaining Lands of Parcel 5, Kaohe III, Hamakua,
Hawaii, Tax Map Key: 3rd/4-4-15:02 (por.).**

Russell Tsuji representing Land Division reminded the Board at the last meeting that staff had two more leases coming before you on Parker Ranch where part of it involves the applicant, Parker Ranch's request for an extension of their lease and staff articulates they meet those qualifications, but on this particular one there are certain lands that were placed in a conservation easement for litigation which was for a term of 10 years because initially the thought, and this was before the Board a couple months ago, was going to be only for 10 years that staff learned later that U.S. Fish and Wildlife is taking a position that area needs a much longer term to perpetuity. Staff recommends that the easement area that they identified be permanently taken out of the lease and will be set aside to the DOFAW Mauna Kea Forest Reserve and they will be managing it for preservation. He did not see any opposition from Ms. Wille on this item and no requests for contested case on Item D- 4.

Unanimously approved as submitted (Pacheco, Morgan)

Item D-5 Re-Submittal Consent to Extension of Lease Term, General Lease No. S-4474, Parker Ranch, Inc., Lessee, for Parcels 14-A and 14-B, Government Land of Puu Kawaiwai, Panoluukia and Kapia, South Kohala, Hawaii, Tax Map Keys: 3rd/6-2-01:03, 15.

Mr. Tsuji reminded Item D-5 is the second Parker Ranch that was brought the last meeting, but because of a typo it is back before us. Staff recommends the Board grant the extension for the lease noting that this lease and D-4 expire in a couple days. Ms. Wille did submit written testimony that she will be requesting a contested case if this Board grants the extension.

Chair Aila noted that there was e-mail testimony from a Linda Copman.

Member Pacheco moved to approve as submitted. Member Goode seconded it. All voted in approval.

Unanimously approved as submitted (Pacheco, Goode)

Item D-6 Rescind Prior Board Action of November 9, 1990, Item F-2; Conveyance of Remnants to County of Hawaii; Issuance of Immediate Management Right-of-Entry to the County of Hawaii, Holualoa 1st and 2nd Partition, North Kona, Hawaii, Tax Map Key: (3) 7-6-16:13 and Road Remnant A.

Mr. Tsuji reported that he got a late call from a Mr. Sandusky who previously the Board had said we can sell you the property as a remnant (the previous owner), but because the county has come forward wanting to use this property as a park the recommendation is to rescind the prior Board action and convey the remnant to the County. Mr. Sandusky said he only opened the mail the day before for various reasons and he mentioned wanting to come to the Board or hear his lawyer to have a chance to argue. Mr. Tsuji couldn't commit not knowing if the County would show up and staff was off on a trip. Since the County wasn't here and there is no sense of urgency he asked to defer to the next meeting to allow Mr. Sandusky or his lawyer to come before the Board.

Member Pacheco made a motion to defer this item D-6. Member Goode seconded it. All voted in favor.

Deferred (Pacheco, Goode)

Item D-1 Issuance of Right-of-Entry Permit to United States Department of Agriculture (USDA), Forest Service for Data Collection Purposes on State Lands at Puna, South Hilo, Laupahoehoe, North Kohala, South Kohala, and Kau, Island of Hawaii, Tax Map Key: (3) 1-2-009:044, (3) 2-1-013:002, (3) 2-6-018:013, (3) 4-9-013:001, (3) 5-9-003:004, (3) 6-6-001:002, and (3) 9-6-002:005.

- Item D-2** **Sale of Remnant to Ronald Reilly, Trustee of the Ronald Reilly Revocable Living Trust, Kaumana House Lots, South Hilo, Hawaii, Tax Map Key: 3rd/2-5-05:82.**

- Item D-3** **Issuance of Revocable Permit to Peter H. Jose and Richard A. J. Jose for pasture purposes, Keehia, Hamakua, Hawaii, Tax Map Key: (3) 4-1-004:031.**

- Item D-7** **Amend Prior Board Action of December 9, 2010(Item D-4), Consent to Mortgage with Estoppel Certificate, Meri-Jo Abrams Manuel, as Successor Trustee of the Lakala Trust, Lessee, Lahaina, Maui, Tax Map Key: (2) 4-5-1:seaward of 55.**

- Item D-8** **Amend Prior Board Action of June 10, 2010 (D-11), Grant of Term, Non-Exclusive Easement to Stanley Gerald Dunn, Trustee of the Stanley Gerald Dunn Revocable Living Trust Dated February 27, 2003 for Seawall Purposes, Lahaina, Maui, Tax Map Key: (2) 4-5-003:025 Seaward.**

- Item D-9** **Issuance of Revocable Permit to Hawaii Explosives and Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key:(1) 2-3-037:021 portion.**

- Item D-10** **Amend Prior Board Action of December 1, 2010, Item D-3, Designation of Certain Select Properties for Income Generation to Support the Management of Lands under the Jurisdiction of the Board and Department of Land and Natural Resources; relating to various TMKs on the Islands of Oahu, Maui, Hawaii and Kauai as articulated in Exhibit B attached hereto and incorporated herein.**

Unanimously approved as submitted (Edlao, Morgan)

- Item C-1** **Request for Approval of Grant of Two Access and Utility Easements by the Maui Coastal Land Trust Over a Portion of Tax Map Key (2) 3-2-010:001, Situate at Waihee and Waiehu, Wailuku, Maui, which is Encumbered by a Conservation Easement; Possible Executive Session Pursuant to Hawaii Revised Statutes Section 92-5(a)(4)**

Member Goode recused himself

Paul Conry representing Division of Forestry and Wildlife (DOFAW) conveyed there were three agenda items and two of them the Chair announced are being withdrawn and that leaves Item C-1 which is a request to go ahead and grant a approval for an easement by Maui Coastal Land Trust to a third party. What is happening here is that the Department is the holder of the conservation easement and therefore we have to go

through this process to get the Board's approval to allow this modification of the conservation easement and this additional use.

Ian Hirokawa representing Land Division explained that there are two owners of two kuleana lots and they seek access and utility easements over a property owned by Maui Coastal Land Trust. How we're involved is we have a CE type property from Maui Coastal Land Trust and it was a quiet title action and working with the Attorney General's Office staff intervened in it to make sure that whatever easement granted to these kuleana lot owners would protect our interest. There is a concern with potential invasive species controls and certain controls staff would like to include in those easements. Staff is doing this to protect their interests.

Member Edlao made a motion to approve as submitted. Member Morgan seconded it. All approved as submitted.

Unanimously approved as submitted (Edlao, Morgan)

Item C-2 Request for Approval of Incidental Take License and Habitat Conservation Plan for Kauai Island Utility Cooperative, Island of Kauai

Member Agor asked what the purpose was for withdrawing. Mr. Conry said it was the suggestion of the Attorney General and she advised that the Board submittal was not ready to go because it was not going to meet Chapter 343 requirements for the document. Staff proceeded in the submittal as they have in the past without requiring chapter 343 on these cases that go through the Chapter 195D process and in this particular case where staff would be conducting monitoring and predator control efforts on State Lands we currently have an exemption that would cover that, but the Attorney General looked at that and advised that would only apply to parceling the Chapter 343 process and advised that was not adequate.

Member Agor queried whether this is a different philosophy with this new administration. Mr. Conry said since the Superferry lawsuit escalated the compliance on Chapter 343.

Member Agor asked whether this is for a plan and that in the past we've exempted plans from the EA. Mr. Conry confirmed that. Member Agor said his argument with this is in trying to do an EA on this particular plan there's got to be data because he doesn't know how else you can complete an EA. There are so many unknown facts about the birds and this short range five year plan they are trying to get approved would during that period be collecting data so they can establish the long range plan. I would like to move forward with the short term. You could knock it down to three years if you want to and then on the long term require an EA because by then they will have information to complete an EA. Ms. Matsukawa suggested going into an executive session. Member Pacheco suggested going through the rest of the agenda items then go into executive session. Member Agor agreed.

Item J-1 Petition of Seabird Cruises, Inc. for Waiver of Minimum Gross Receipts Requirement for Reissuance of Commercial Use Permit for Maalaea Small Boat Harbor, Maui

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) summarized that this deals with the reissuance of a commercial use permit. A commercial operator needs to meet a minimum gross receipts requirement. Staff had done things in the past that we accepted and re-issued this permit. We recently changed the way we were doing it because if you have multiple permits you can combine your gross receipts. We looked at the total gross receipts where we weren't looking at individual permits and when we did that it came to their attention that this particular company didn't meet the requirement. However, there's a provision in the rules that allow the permittee to come before the Department to waive that requirement. Going back and researching this Mr. Niles is here representing the petitioner. There are issues on staff's side and some issues on the petitioner's side that occurred. After speaking to the Maui District Manager we don't have an issue with this permit being renewed once again however, with the condition that going forward they are going to have to meet the requirements of submitting monthly gross receipts for this particular commercial use permit for the Ma'alaea small boat harbor and achieving the minimum. If they do not going forward then they are subject to not re-issuing the permit. Our recommendation is for the Board to decide because they are in a catch 22 on this one and they are also asking for future situations such as this that we delegate the responsibilities to make that decision to the Chairperson so we won't need to be bringing these before the Board.

Member Pacheco asked whether the minimum receipts are in the rule. Mr. Underwood confirmed that is correct.

Member Goode asked if this was the only one that held this category when you aggregated the various permits. Mr. Underwood acknowledged that. It was a past practice done in the harbors. When staff went back and looked this particular commercial operator wouldn't have met maybe for several years, but staff renewed using this practice. The District Manager said you had to break it out and when they did that was when they noticed it didn't meet. They provided a letter why – economics, recession. Staff understands that. There are issues on both sides. Staff has been accepting that practice. Staff did not give them advance notice that we were going to break it out. They did not give us advance notice according to the rule that they weren't operating the boat. There were things on both sides and staff is okay with the permittee and re-issue, but staff needed to come before the Board because staff doesn't have that authority.

Member Pacheco asked whether the recommendation still stands. Mr. Underwood acknowledged it stands. It's asking the Board whether the permit should be re-issued. Member Morgan asked and his recommendation to the Board is to re-issue. Mr. Underwood acknowledged that we don't have a problem with the permittee re-issue and to delegate to the Chair.

Member Pacheco asked for item #2 was for all permits coming through or this particular permit. Mr. Underwood explained it's only for the waiver of the gross receipts requirement for the commercial operator and for all commercial permittees throughout the State. Member Morgan commented that I don't think this is the kind of thing to have before the whole Board. Member Pacheco said he was wondering of some individuals of the public who are looking at our actions and previous things on this that item #2 to him seems to be outside of the privy of the agenda and title and we're going to get into a policy call here and are we going to get into some Sunshine issue. Member Pacheco said the correct agenda item title doesn't reflect the delegation from the Board to the Chair. It just reflects the waiver of minimum gross receipts and the reissuance of the permit. Mr. Underwood asked if that would need to be in the agenda title to say to delegate. Ms. Matsukawa indicated yes, because that's what's published.

There was some Board discussion that they can only do #1, but can bring #2 back later.

Dennis Niles representing Seabird Cruises introduced Steven Lui who is the owner and president of Seabird Cruises, and said that he was testifying on condition #2 because in some ways it explains why they are here this afternoon. It has been the practice through the various harbors or at least in some limited instances where either the district manager or the supervising harbor agent made the determination whether or not a particular commercial permit holder was eligible for renewal. If there was an issue with gross receipts and whether or not justification existed for excusing an operators failure to achieve the requisite gross receipts that decision was being made on the local level. Mr. Underwood determined fairly recently that was not a decision that should be made at the local level. The administrative rule that we are talking about makes reference to the department when I read that rule through the years I always viewed that to mean the administrator. That interpretation in some respects changed and it was determined that in fact the Department meant the Board of Land and Natural Resources so in effect that is a policy change that one could argue should've gone through a rule making process because up until that point the determination had been made at local level and certainly at the administration level, the DOBOR level where someone who works in this area belongs there is not the kind of issue that should engage the Board. Mr. Niles said he respectfully would take the position that the change in the interpretation of the Department was something that should have gone through a rule making process so that this particular condition arguably reflects the practice that had been at the agency for a long time.

Mr. Underwood explained what had happened was they had a similar issue occurred on the Big Island. He had an informal discussion with a (Deputy) Attorney General when it says Department it means Board of Land and Natural Resources unless it has been delegated out and we have no record of it being delegated out. He told them until we can get this delegation we are going to need to bring this before the Board of Land and Natural Resources and this happens to be the first one.

Member Pacheco asked whether the rule allows the Board to delegate authority to do that. Mr. Underwood said not in the Boating rules. Its something the Board has the

discretion to do. Member Pacheco said but the rule allows the Board to delegate because in other rules it always says the Board or the authority delegated by the Board. Mr. Underwood said it says the Department may waive the gross receipts requirement if you can demonstrate reasonable conditions or whatever causes you not to make your minimum gross.

Member Pacheco asked his question is do we have the authority under that rule to delegate it down or does there have to be a rule change. Member Goode said that is not on the agenda and we can't talk about that. Ms. Matsukawa suggested we move on to the Board submittal.

Mr. Niles thanked the Board for the opportunity to appear in support of the petition. This is an unfortunate convergence of various circumstances, but the ultimate standard is would it be fair and warranted to allow the renewal of this permit notwithstanding the failure to meet the revenue requirement. There was a change in policy. Before Seabird (Cruises) was allowed to aggregate the income it has under three commercial permits and the year in question that income was in excess of \$500,000 whereas the threshold for this permit was \$85,000 so once they disaggregated and broke out there was a shortfall. The one issue that resonates for him in terms of fairness is the fact that for a number of years the permit was renewed and was never questioned that they would be ineligible until 2009 and heading up to the annual renewal Seabird had received a letter saying here is the deadline for renewal, here is the application you have to submit (from a Ma'alaea harbor agent). No indication that they were in jeopardy that there was an issue. Mr. Niles related how the Lanai harbor agent sends out renewal letter specifically stating whether the operator is deficient in terms of their revenue requirement where the operator is given four months to get their act together or otherwise...

Member Morgan asked isn't this moot because staff is recommending us approve. Member Pacheco said this Board is ready.

Member Edlao asked any recommendation is to re-issue right? The Chair acknowledged that.

Member Edlao made a motion to accept the amended recommendation striking item #2. Member Goode seconded it. All voted in favor.

**Unanimously approved as amended (Edlao, Goode)
Approved with striking recommendation #2.**

Item F-6 Request for Approval to Enter into a New FY12 Project Agreement for \$678,000 (\$543,750 Federal, \$134,250 Commercial Fisheries Special Fund) between the Board of Land and Natural Resources (BLNR) and the Research Corporation of the University of Hawai'i (RCUH) for the Division of Aquatic Resources' Hawai'i Marine Recreational Fishing Survey Project

Item F-7 Request for Approval to Temporarily Close the Bottomfish Fishing Season for All State Marine Waters in the Main Hawaiian Islands and to Delegate Authority to the DLNR Chairperson to Set This and Future Closure Dates

Francis Oishi representing Division of Aquatic Resources (DAR) made a correction to Item F-6, page 1, first paragraph, line four change the figure of \$134, 205 should match the agenda title amount \$134,250. Item F-7, staff is asking the Board authorize the Chairman to make the determination for the bottom fish closure date. Staff put to be determined in this submittal because we didn't know what the date was. Staff met with NOAA last week and the date was set for March 12th and is when the bottom fish season closes. NOAA has put out their announcement today in their Federal register for March 12th. Staff is asking that any future closure dates would be delegated to the Chairperson.

There was some Board discussion regarding the above amendments.

- Item F-1 Request for Approval to Enter into a New FY 12 Federally-Funded (\$330,000) Contract Between the Department of Land and Natural Resources (DLNR) and the University Of Hawaii (UH) for the Collaborative Administration of the Hawaii Fish Aggregating Device (FAD) System**
- Item F-2 Request for Approval to Add Federal Funding (\$385,291) and Extend through FY12 the Department of Land and Natural Resources (DLNR)/University of Hawaii (UH) Contract No. 55137 for the Project Titled Evaluating the Effectiveness of Restricted Fishing Areas for Improving the Bottomfish Fishery**
- Item F-3 Request for Approval to Add Federal Funding (\$52,000) and Extend through FY12 an Existing Project Agreement (Contract No. 52851) between the Board of Land and Natural Resources (BLNR) and the Research Corporation of the University of Hawaii (RCUH) for the Division of Aquatic Resources' Ulua Tagging Project**
- Item F-4 Request for Approval to Add Federal Funding (\$336,561) and Extend through FY12 a Project Agreement (Contract No. 58627) between the Board of Land and Natural Resources (BLNR) and the Research Corporation of the University of Hawaii (RCUH) for the Division of Aquatic Resources' Maui/Oahu Marine Resources Assessment Project**
- Item F-5 Request for Approval to Enter into a New FY12 Federally Funded Project Agreement for \$465,000 between the Board of Land and Natural Resources (BLNR) and the Research Corporation of the University of Hawaii (RCUH) for a Division of Aquatic Resources Project Titled "Investigation of Estuarine Habitats"**

Item F-8 Request for Approval of Special Activity Permit 2011-54 for Dr. Donald Kobayashi, Pacific Islands Fisheries Science Center, NOAA, to Conduct Research on State Regulated Deep-7 Bottomfish in the Main-Hawaiian Islands

Member Goode made a motion to approve as submitted. Member Pacheco seconded it. All voted in favor.

Unanimously approved as submitted (Goode, Pacheco)

Item C-2 Request for Approval of Incidental Take License and Habitat Conservation Plan for Kauai Island Utility Cooperative, Island of Kauai

Member Pacheco made a motion to go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Goode seconded it.

2:53 PM EXECUTIVE SESSION

Moved Back to Open Session (Edlao, Morgan)

3:26 PM ADJOURNED

Adjourned (Edlao, Morgan)

There being no further business, Interim Chairperson Aila adjourned the meeting at 3:26 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



William J. Aila, Jr.
Interim Chairperson
Department of Land and Natural Resources