

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 27, 2014

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No. 13HD-147 (summit lease)
PSF No. 13HD-148 (Hale Pohaku lease)
PSF No. 13HD-149 (easement)

Hawaii

Denial of Requests for Contested Case by (1) Kalani Flores, (2) Paul Neves, and (3) Hanalei Fergerstrom re: (a) Board Action of November 8, 2013, Item D-5, No Action on Mutual Cancellation of General Lease No. S-4191 to the University of Hawaii (UH) for the Mauna Kea Science Reserve and Issuance of New Direct Lease to UH for Mauna Kea Science Reserve Purposes; Mutual Cancellation of General Lease No. S-5529 to UH for the Hale Pohaku Mid-Level Facilities and Issuance of New Direct Lease to UH for Hale Pohaku Mid-Level Facilities Purposes; Extension, Amendment and Restatement of Grant of Term Easement S-4697 to UH to Extend the Easement Term by Approximately 45 Years and Update the Easement Instrument with Current Provisions Approved by the Department of the Attorney General; and (b) Board Action of December 13, 2013, Item D-15, Deferring Action on Resubmittal: Mutual Cancellation of General Lease No. S-4191 to the University of Hawaii (UH) for the Mauna Kea Science Reserve and Issuance of New Direct Lease to UH for Mauna Kea Science Reserve Purposes; Mutual Cancellation of General Lease No. S-5529 to UH for the Hale Pohaku Mid-Level Facilities and Issuance of New Direct Lease to UH for Hale Pohaku Mid-Level Facilities Purposes; Extension, Amendment and Restatement of Grant of Term Easement S-4697 to UH to Extend the Easement Term by Approximately 45 Years and Update the Easement Instrument with Current Provisions Approved by the Department of the Attorney General, Kahohe, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 por., 09 & 12

BACKGROUND:

On November 8, 2013, Item D-5, the Board of Land and Natural Resources considered the request of the University of Hawaii (UH) for new leases of the Mauna Kea Science Reserve and Hale Pohaku Mid-Level facilities, and the extension of the term grant of access easement covering the road that connects the two lease premises. See Exhibit 1 attached.¹ Native Hawaiian Legal Corporation (NHLIC), representing Kalani Flores

¹ Only the first page of the submittal for November 8, 2013, Item D-5, is attached. With the exception of the document date and the first page, the rest of the submittal is identical to Exhibit 3 attached, which was

(Flores) and Paul Neves (Neves), submitted written testimony against the proposed action on November 7, 2013. See Exhibit 2 attached. The written testimony requested a contested case hearing.

NHLC attorneys also presented oral testimony at the meeting, and orally requested a contested case hearing before the close of the meeting. Hanalei Fergerstrom (Fergerstrom) testified at the November 8, 2013 meeting as well, although the minutes do not reflect that he requested a contested case hearing prior to the close of the meeting. Testimony by other parties continued into the late afternoon, when one of the Board members had to leave the meeting, resulting in a lack of quorum. The remaining Board members continued to hear testimony until all persons present at the meeting wishing to testify had done so. The meeting then closed without any action on UH's request.

The matter was re-submitted to the Board for consideration at its meeting of December 13, 2013, Item D-15. See Exhibit 3 attached. Fergerstrom submitted undated written testimony opposing the proposed action prior to the meeting. See Exhibit 4 attached. Fergerstrom also spoke at the meeting to put concerns on the record about the meeting not complying with Sunshine Law requirements. UH representatives then advised the Board that UH intended to conduct HRS Chapter 343 review of its request for new land dispositions, and asked the Board to defer action on its request until completion of the HRS Chapter 343 review. According to the meeting minutes, Fergerstrom thereafter withdrew his request for a contested case.²

Flores, Neves and Fergerstrom are sometimes referred to hereinafter collectively as "Petitioners".

RECEIVED PETITIONS:

Petitioners Flores and Neves submitted separate written requests for contested case hearing following the November 8, 2013 meeting as follows:

Flores – Petition for a Contested Case Hearing received at Land Division on November 18, 2013. See Exhibit 5 attached.

Neves – Petition for a Contested Case Hearing received at Land Division on November 18, 2013. See Exhibit 6 attached.

Following the December 13, 2013 meeting, Petitioner Fergerstrom submitted a letter dated December 17, 2013 and received at Land Division on December 23, 2013, in which

the resubmittal of the matter at the Board's December 13, 2013 meeting, Item D-15.

² As noted below, however, Fergerstrom nevertheless submitted a letter requesting a contested case.

he requested assurance that he had reserved his right to a contested case. See Exhibit 7 attached.

DISCUSSION:

The record shows that Petitioners Neves and Flores timely made oral requests for contested cases and timely filed petitions for contested case hearings. Although it is less clear whether Petitioner Fergerstrom requested a contested case hearing at the December 13, 2013 meeting, staff is assuming for purposes of this submittal that all three Petitioners met the procedural requirements for filing contested cases in this matter. However, after consultation with the Department of the Attorney General, staff recommends denial of Petitioners' requests on the basis that the matter is not ripe for a contested case, and that in any event Petitioners are not entitled to a contested case hearing by statute, rule or due process.

As noted above, the Board has not yet taken any action on UH's request. The November 13, 2013 meeting closed without action on the matter after the Board lost quorum. At the December 13, 2013 meeting, the Board deferred action on UH's request after UH said that it would complete HRS Chapter 343 review of its lease requests and return to the Board at a later date. Accordingly, there is no Board action to contest.

Even if the Board had taken action on UH's request, such action would not be subject to a contested case under applicable law. In Sharma v. State, Dept. of Land and Natural Resources, 66 Haw. 632, 673 P.2d 1030 (1983), for example, the Board canceled a lease because of default. The lessee contended he was entitled to a contested case hearing on the cancellation. The Hawaii Supreme Court disagreed. It reasoned that a contested case hearing was required if the Board was acting in a rule-making or quasi-judicial capacity. However, the Board was not acting in either capacity in dealing with the lease. Instead it was dealing with matters of internal management, because "the internal management of an agency necessarily includes the custodial management of public property entrusted to the agency." A contested case was, therefore, not required.

For the foregoing reasons, staff is recommending denial of the Petitioners' requests for contested case hearings.

RECOMMENDATION:

That the Board:

- A. Deny the petition for a contested case hearing filed by Kalani Flores;
- B. Deny the petition for a contested case hearing filed by Paul Neves; and

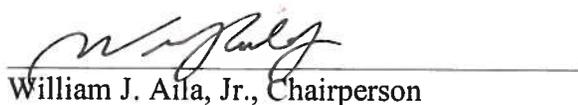
C. Deny the petition for a contested case hearing filed by Hanalei Fergerstrom.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



NO ACTION

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 8, 2013

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No. 13HD-147 (summit lease)
PSF No. 13HD-148 (Hale Pohaku lease)
PSF No. 13HD-149 (easement)
Hawaii

Mutual Cancellation of General Lease No. S-4191 to the University of Hawaii (UH) for the Mauna Kea Science Reserve and Issuance of New Direct Lease to UH for Mauna Kea Science Reserve Purposes; Mutual Cancellation of General Lease No. S-5529 to UH for the Hale Pohaku Mid-Level Facilities and Issuance of New Direct Lease to UH for Hale Pohaku Mid-Level Facilities Purposes; Extension, Amendment and Restatement of Grant of Term Easement S-4697 to UH to Extend the Easement Term by Approximately 45 Years and Update the Easement Instrument with Current Provisions Approved by the Department of the Attorney General, Kaohe, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 por., 09 & 12

APPLICANT:

University of Hawaii

LEGAL REFERENCE:

Sections 171-13 and 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Government Lands of Kaohe, Hamakua Island of Hawaii, identified by Tax Map Keys: 3rd/ 4-4-15:01 por., 09 & 12, as shown on the attached maps labeled Exhibit A.

No action due to lack of quorum

~~APPROVED~~ BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

November 8, 2013 *UD.*

D-5

EXHIBIT 1



NATIVE HAWAIIAN LEGAL CORPORATION

Serving Hawai'i since 1974

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813 • Phone (808) 521-2302 • Fax (808) 537-4268

November 7, 2013

Chairperson William Aila and Board Members
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawai'i 96813

RECEIVED
NOV 11 2013
11 11 31
REGISTRATION

RE: *November 8, 2013 BLNR Agenda Item No. D-5: Mutual Cancellation of General Lease No. S-4191 to the University of Hawaii (UH) for the Mauna Kea Science Reserve and Issuance of New Direct Lease to UH for Mauna Kea Science Reserve Purposes; Mutual Cancellation of General Lease No. S-5529 to UH for the Hale Pohaku Mid-Level Facilities and Issuance of New Direct Lease to UH for Hale Pohaku Mid-Level Facilities Purposes; Extension, Amendment and Restatement of Grant of Term Easement S-4697 to UH to Extend the Easement Term by Approximately 45 Years and Update the Easement Instrument with Current Provisions Approved by the Department of the Attorney General, Kaahe, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 por., 09 & 12 (HDLO)*

Dear Chairperson William Aila and Board Members,

On behalf of Kalani Flores, Native Hawaiian Legal Corporation hereby submits its testimony regarding the above agenda item. Mr. Flores is a Native Hawaiian with traditional and customary practices on the sacred mountain of Mauna Kea, a sacred site and “the abode of the gods.” Mr. Flores is concerned that this Board will violate its duties as trustee of the ceded lands trust as well as its obligations pursuant to Hawai'i Revised Statutes chapter 343 and *Ka Pa`akai O Ka `Aina v. Land Use Commission* if the above agenda item is approved.

We request that this Board deny the University's request to cancel and reissue General Lease No. S-4191, cancel General Lease No. S-5529 and issue a new direct lease for the Hale Pohaku Mid-Level Facilities, extend, amend, and restate the grant of term easement S-4697 to extend the easement term by 45 years, and update other provisions (hereinafter, the “Leases”).

Mr. Flores joins with the objections expressed in the October 3, 2013 letter from Kamana`opono M. Crabbe, Ph.D., Chief Executive Officer of the Office of Hawaiian Affairs (Exhibit K to the Staff Submittal) and incorporates the arguments therein, subject to the following three points:

- I. The Board Cannot Rely On The Comprehensive Management Plan To Satisfy The Required *Ka Pa`akai* Analysis.

Services made possible with major funding from the Office of Hawaiian Affairs.

EXHIBIT 2

In order to fulfill its duty to preserve and protect customary and traditional native Hawaiian rights to the extent feasible, DLNR and BLNR

must -- at a minimum -- make specific findings and conclusions as to the following: (1) the identity and scope of "valued cultural, historical, or natural resources" in the ... area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources --including traditional and customary native Hawaiian rights -- will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken . . . to reasonably protect native Hawaiian rights if they are found to exist.

Ka Pa`akai O Ka `Aina v. Land Use Comm'n, 94 Hawai`i 31, 47, 7 P.3d 1068, 1084 (2000). Under *Ka Pa`akai*, an agencies analysis must be "independent," 94 Hawai`i at 45, 7 P.3d at 1083, and the duty of the agency to analyze the *Ka Pa`akai* framework cannot be delegated to the applicant. *Id.* at 60, 7 P.3d 1087. In *Ka Pa`akai*, the Supreme Court held that the LUC's adoption of the applicant's Resource Management Plan to satisfy its duty to assess violated "the LUC's duty to independently assess the impacts of the proposed [action] on such customary and traditional practices." *Id.*

Here, the Staff Submittal encourages this Board to do exactly what the Supreme Court prohibited in *Ka Pa`akai* -- to rely on the analysis done by the 2009 CMP as its independent assessment of the impacts that the proposed Leases would have on customary and traditional practices. This is not allowable under Hawaii law. Further, the CMP was completed four years before the Leases were proposed. How can the CMP identify and protect these practices from an action that was not at that time proposed? The Board cannot issue these leases until a completely independent inquiry is made.

II. H.R.S. Chapter 343 Requires That An Environmental Assessment Be Prepared Before Any Action on the Leases are Taken.

The proposed use of state land triggers HEPA, codified as H.R.S. Chapter 343, and requires the preparation of an environmental assessment to "ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations." Hawai`i Revised Statutes § 343-1. However, the above agenda item proposes to exempt the Leases from the preparation of an EA. This exemption is not allowed by law and may subject the Board to judicial enforcement of Chapter 343.

H.R.S. § 343-5 identifies certain actions that trigger the preparation of an EA. One such trigger is where an action "[p]ropose[s] the use of state or county lands [.]" H.R.S. 343-5(a)(1). The rules that implement Chapter 343 defines the "use of state or county lands" to include "any use (title, lease, permit, easement, licenses, etc.) or entitlement to those lands." Hawai`i Administrative Rules § 11-200-5(C).

H.A.R. § 11-200 does indeed exempt “only very minor projects from the ambit of HEPA,” *Kahana Sunset Owners Association v. County of Maui*, 86 Hawai‘i 66, 72, 947 P.2d 378, 384 (1997). However, this exemption is inapplicable to projects “when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.” H.A.R. § 11-200-8(B).

Here, the Staff Submittal proposes to exempt UH from preparing an EA for these Leases because “the Board generally does not require an environmental assessment or environmental impact assessment to extend a lease and existing uses.” Staff Submittal, page 19. Accordingly, the Department staff suggests that this use of state land falls within an exemption covering “[o]perations, repairs or maintenance of existing structures, facilities, equipment or topographical features involving negligible or no expansion or change of use beyond that previously existing.”

The proposed exemption is not justified under Hawai‘i law. First, as HAR § 11-200 defines a use of state land as including any “lease, permit, easement, licenses, etc.,” leases cannot be considered “generally” exempt from Chapter 343. To do so would produce an illogical result: why would a “lease” be considered a use of state lands if all leases would be generally exempted from Chapter 343?

Second, the area to be disposed by the Leases has been admitted by the University of Hawaii to be “sensitive.” The University of Hawai‘i, through their Mauna Kea Comprehensive Management Plan (“CMP”), agrees that “Mauna Kea is probably one of the most significant cultural and astronomical sites in the world[,]” and admits in many places that the Mauna Kea Science Reserve contains both culturally and environmentally “sensitive” areas. *See* CMP, at 5-1, 7-13, 7-14, 7-25, 7-26, 7-30, 7-34, 7-35, 7-48. The University has written that “[i]t is clear that to many Hawaiians, Mauna Kea is more than a mountain; it is the embodiment of the Hawaiian people.” This area is also sensitive and important to Mr. Flores, who has previously been qualified as an expert to their cultural practices related to Mauna Kea and in the area of Hawaiian cultural traditions through his knowledge, skills, experience, training, and education.

Third, the Leases are the first step towards realization of development which, over time, may have significant, cumulative impacts. The Staff Submittal recognizes that UH is seeking the Leases “to provide the basis for developing sublease agreements with current and . . . any potential future telescope projects. Staff Submittal at 5. Further, as the proposed Exemption Notification for this Project states, “these actions are part of a multi-phase project.” *See* Staff Submittal, Exhibit B. The CMP additionally recognizes that future projects will occur in the lease area. *See* CMP, at 2-5, 7-50, 7-55. Where a project may have significant cumulative impacts, or is the first step in facilitating future development, Chapter 343 mandates an EA *regardless* of whether or not future permits or approvals are required. *Kahana Sunset*, 86 Hawai‘i at 74, 947 P.2d at 386 (“Isolating only that particular component of development for environmental assessment would be improper segmentation of the project.”); accord *Citizens for*

the Protection of the North Kohala Coastline v. County of Hawai'i, 91 Hawai'i 94, 105, 979 P.2d 1120, 1131 (1999); *Sierra Club v. Office of Planning*, 109 Hawai'i 411, 126 P.3d 1098 (2006).

Fourth, federal case law requires that a renewal of a project must be considered as if it was a new action, not a "continued use". In *Confederated Tribes and Bands of the Yakima Indian Nation*, 746 F.2d 477 (9th Cir. 1984), the United States Court of Appeals held that an environmental review of a project that is a relicensing or renewal of a current project must examine the new action as if the previous project never occurred.

III. The Lease Terms Constitute a Breach of the State's High Fiduciary Duties to the Ceded Lands Trust.

The proposed actions will constitute a breach of the State's duties as trustee of the Ceded Lands Trust.

Under Article XII, Section 4 of the Constitution of the State of Hawai'i, the lands granted to the State by Section 5(b) of the admission Act "shall be held by the State as a public trust for native Hawaiians and the general public." H.R.S § 10-13.5 mandates that the Office of Hawaiian Affairs receive twenty percent of all funds derived from the public land trust.

The Supreme Court of Hawai'i has recognized that the State, in "administering the ceded lands . . . is subject to the standard of "high fiduciary duties." *Office of Hawaiian Affairs v. State*, 110 Hawai'i 338, 355, 133 P.3d 767, 784 (2006). These duties include the duty of impartiality among multiple beneficiaries, and the "obligation [] to use reasonable skill and care to make trust property productive, or simply to act as an ordinary and prudent person would in dealing with his own property." *Ahuna v. Dep't of Hawaiian Home Lands*, 64 Haw. 327, 339-340, 640 P.2d 1161, 1169 (1982) (citations omitted). Native Hawaiians have the ability to sue the State over mismanagement of the ceded lands trust. *OHA v. State, supra*; *OHA v. HCDCH*, 121 Hawai'i 324, 219 P.3d 1111 (2009).

The Staff Submittal indicates that the lands covered by the Leases are Section 5 B lands. Therefore, by approving the University's proposal, the Board would violate its trust duties to make the trust property productive and to deal with multiple beneficiaries with impartiality. First, by providing the Leases to the University of Hawaii *gratis*, this Board will be ignoring the interests of native Hawaiians, who, through the Office of Hawaiian Affairs, would benefit from the payment of 20% of any such lease rent demanded by the Board. The Board must be impartial among the beneficiaries, and thus cannot favor the public's use of the Mauna Kea Science Reserve over native Hawaiians' right to 20% of all revenue derived from the public land trust. Therefore, the Department must charge fair market value for the Leases to insure that native Hawaiians receive their mandated 20% share of all revenue, and must require the University to charge fair market value in all subleases made under the Leases.

Chairperson William Aila and Board Members
November 7, 2013
Page 5 of 5

For all these reasons, the BLNR should not cancel and reissue these leases until all of these issues are properly addressed.

Sincerely,

A handwritten signature in black ink, appearing to be "DKopper", written in a cursive style.

David Kauila Kopper
Ashley K. Obrey
Leina'ala Ley
Attorneys for Kalani Flores

DEFERRED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 13, 2013

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No. 13HD-147 (summit lease)
PSF No. 13HD-148 (Hale Pohaku lease)
PSF No. 13HD-149 (easement)
Hawaii

Resubmittal:

Mutual Cancellation of General Lease No. S-4191 to the University of Hawaii (UH) for the Mauna Kea Science Reserve and Issuance of New Direct Lease to UH for Mauna Kea Science Reserve Purposes; Mutual Cancellation of General Lease No. S-5529 to UH for the Hale Pohaku Mid-Level Facilities and Issuance of New Direct Lease to UH for Hale Pohaku Mid-Level Facilities Purposes; Extension, Amendment and Restatement of Grant of Term Easement S-4697 to UH to Extend the Easement Term by Approximately 45 Years and Update the Easement Instrument with Current Provisions Approved by the Department of the Attorney General, Kaohe, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 por., 09 & 12

APPLICANT:

University of Hawaii

LEGAL REFERENCE:

Sections 171-13 and 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Government Lands of Kaohe, Hamakua Island of Hawaii, identified by Tax Map Keys: 3rd/ 4-4-15:01 por., 09 & 12, as shown on the attached maps labeled Exhibit A.

Deferred
~~APPROVED~~ BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
December 13, 2013 *120*

D-15

EXHIBIT 3

TABLE 1- TMK/ ZONING/ AREA/ ENCUMBRANCE:

TAX MAP KEY 3 rd /	ZONING		PARCEL AREA Acres	ENCUMBRANCE
	LUC	CZO		
4-4-15:09	Conservation	Unplanned	11,215.554 ac	General Lease (GL) No. S-4191 to UH for the Mauna Kea Science Reserve; GL No. S-4697 to UH for access easement; GL No. S-3853a to the United States for a water lease
4-4-15:12	Conservation	Unplanned	19.261 ac	GL No. S-5529 to UH for the Hale Pohaku Mid-Level Facilities
4-4-15:01 por.	Conservation	Unplanned	52,741.685 ac (easement area: 70.798 ac)	Grant of Easement No. S-4697 to UH

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

General Lease No. S-4191 to UH for the Mauna Kea Science Reserve, GL No. S-5529 to UH for the Hale Pohaku Mid-Level Facilities, and GL No. S-4697 to UH for access easement (sometimes collectively referred to hereinafter as the UH Management Areas).

LEASE CHARACTER OF USE:

GL S-4191 – For a scientific complex and as a scientific reserve being more specifically a buffer zone to prevent the intrusion of activities inimical to said scientific complex. Activities inimical to said scientific complex shall include light and dust interference to observatory operation and certain types of electric or electronic installation on the demised lands, but shall not necessarily be limited to the foregoing.

GL S-5529 – The lessee shall use or allow the premises leased to be used solely for permanent mid-level facilities, a construction camp, an information station as well as existing facilities purposes.

LEASE TERM:

Sixty-five (65) years.

LEASE COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

LEASE RENT:

Gratis.

LEASE PERFORMANCE BOND:

None.

EASEMENT CHARACTER OF USE:

Non-exclusive easement and right-of-way over and across the real property described therein.

EASEMENT TERM:

Grant of Easement S-4697 commenced on December 26, 1974, and is scheduled to terminate on December 31, 2033. The easement term is to be extended so that it is coterminous with the new leases to Applicant.

EASEMENT RENT:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See the Exemption Notification attached as Exhibit B.

DCCA VERIFICATION:

Not applicable. UH is a government agency and is not required to register with the Department of Commerce and Consumer Affairs.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for the cost of the publication of notice of disposition by negotiation pursuant to Hawaii Revised Statutes Section 171-16(c);
- 2) Provide a complete, as-built survey map and description of the alignment of the

Hawaii Electric Light Company, Inc. easement extending through the lease
premises and Mauna Kea Ice Age Natural Area Reserve

REMARKS:

Background

The Mauna Kea Science Reserve (MKSR), the largest of the University of Hawaii (UH) Management Areas, was established in 1968. The entire 11,288-acre MKSR is designated as part of the Conservation District, resource subzone. While ultimate authority over the management of the MKSR is retained by the Board of Land and Natural Resources (Board), certain responsibilities are performed by UH as provided in the Mauna Kea Comprehensive Management Plan and its subplans (Cultural Resources Management Plan, Natural Resources Management Plan, Public Access Plan, and Decommissioning Plan), as the Board-approved management documents for land use and activities within the MKSR.

Eight optical and/or infrared observatories are currently present in the MKSR's 525-acre Astronomy Precinct; the first Mauna Kea observatories were built in the 1960s. Optical/infrared telescopes use mirrors to collect and focus visible and infrared light. Each optical/infrared observatory consists of a single telescope, except the W. M. Keck observatory which currently houses the two most powerful optical/infrared telescopes on Mauna Kea, each with a 10-meter diameter primary mirror. The MKSR also hosts three submillimeter observatories and a radio antenna.

The Hale Pohaku mid-level support facilities cover an area of approximately 19.3 acres at the 9,200 ft. elevation on the south slope of Mauna Kea. The mid-level site houses the Onizuka Center for International Astronomy, the visitor information and comfort stations, a construction laborers camp, and existing cabin facilities constructed by the Territory of Hawaii and State of Hawaii prior to establishment of the MKSR in 1968.

The current Summit Access Road was improved in 1983 covering an area of 70.798 acres. The Final Management Plan for Conservation District Use Permit (CDUP) HA-1573 was approved by Board at its meeting of February 22, 1985, which added a 400-yard wide corridor on either side of the roadway. The total area currently covered by the Summit Access Road and associated corridor is approximately 723 acres.

By letter dated August 22, 2013, UH, through its Board of Regents, requested the mutual cancellation of the existing leases for MKSR (GL No. S-4191) and the Hale Pohaku Mid-Level Facilities (GL No. S-5529), and the issuance of new 65-year leases for the premises. The letter also requested the amendment of Grant of Easement No. S-4697 covering the Mauna Kea Observatory Access Road to be coterminous with the new general leases. The reasons UH gave for the request were:

1) the need to address internal changes made by the UH in how it manages lands on Mauna Kea; 2) the need to reflect management actions and reporting requirements adopted by the Board of Land and Natural Resources . . . ; 3) to assist in implementing legislation concerning the Mauna Kea lands managed by UH; and 4) to provide the basis for developing sublease agreements with current and . . . any potential future telescope projects.

See Exhibit C attached.

Staff reviews the history of the leases and easement, and analyzes the propriety of the requested new dispositions below.

General Lease No. S-4191

At its meeting of November 22, 1967, Item F-31, the Board approved the issuance of a 65-year lease of the Mauna Kea summit to UH “[t]o serve as a Scientific Reserve and, specifically, as a buffer zone to prevent the intrusion of activities inimical to scientific complex, including an observatory, in the process of being located near the Mauna Kea summit”. General Lease No. S-4191 dated June 21, 1968 was thereafter issued to UH with a commencement date of January 1, 1968 and a termination date of December 31, 2033.

Subsequently, UH obtained Board approval for and issued the following subleases:

TABLE 2 – EXISTING SUBLEASES

Sublessee	Date of Bd Action	Character of Use	Area	EIS	CDUP Appr'd	Sublease Term
National Aeronautics and Space Administration	2/19/75, Item F-1-d	Erecting and operating infrared astronomical observatory facilities	70,650 sf	Appr'd 8/4/75	HA-653; 8/29/75, Item H-5	11/29/74-12/31/33
Canada-France-Hawaii Telescope Corporation	11/7/75, Item F-11	Erecting and managing astronomical observatory research facilities	2 acres	Appr'd 8/12/74	HA-527	12/18/75-12/31/33
Science Research Council	11/18/77, Item F-17	Erecting and managing astronomical observatory research facilities	32,000 sf	Appr'd 8/4/75	HA-653; 8/29/75, Item H-5	1/21/76-12/31/33
Science and Engineering Research Council	4/22/83, Item F-1-f	Construction and operation of a 15-meter telescope facility and appurtenant	2 acres	Appr'd 1/20/83	HA-1515; 2/25/83, Item H-11	2/10/84-12/31/33

Sublessee	Date of Bd Action	Character of Use	Area	EIS	CDUP Appr'd	Sublease Term
		improvements				
California Institute of Technology	8/26/83, Item F-1-i	Construction and operation of a 10.4 meter telescope	.75 acre	Appr'd 8/26/82	HA-1492; 12/17/82, Item H-6	12/20/83-12/31/33
California Institute of Technology	6/14/85, Item F-1-a	Construction and operation of the WM Keck 10-meter telescope observatory	2 acres	Appr'd 1/2083	HA-1646; 8/24/84, Item H-1; HA-2509	10/30/85-12/31/33
National Astronomical Observatory of Japan	8/21/97, Item D-1	Construction and operation of the 8-meter Japan national large telescope	5.4 acres	Appr'd 1/20/83	HA-2642	6/5/92-12/31/33
Smithsonian Institution	8/21/97, Item D-2	Construction and operation of the Smithsonian submillimeter array telescope	3 acres	Appr'd 1/20/83	HA-2728	5/15/95-12/31/33
Associated Universities Inc.	8/21/97, Item D-3	Construction and operation of a very long baseline array antenna	87,500 sf	Appr'd 11/2/88	HA-2174	9/28/90-12/31/33
National Science Foundation	8/21/97, Item D-4	Construction and operation of the Gemini 8-meter telescope	2 acres	Appr'd 1/20/83	HA-2691	9/26/94-12/31/33

The rent charged for the subleases was nominal at \$1.00 for the term of the sublease, however, UH received observatory time at sublessees' facility in exchange for issuing the sublease.¹ For each sublease, a CDUP was secured for the telescope facility as indicated above.²

At its meeting of November 9, 1978, Item H-10, the Board approved the set aside of the Mauna Kea Ice Age Reserve (MKIAR), comprising two locations of 3,750 acres and 143.5 acres, to the Natural Area Reserve Commission. Additionally, the Board approved a CDUP for the designation of the MKIAR, as well as other locations throughout the State, as natural area reserves at its meeting of May 8, 1981, Item H-11. Governor's

¹ The Board additionally approved some short-term dispositions which have expired by their terms and are not listed in Table 2.

² A number of other CDUPs and site plan approvals were issued for various projects in the MKSR, at Hale Pohaku, and for the access road as indicated in Exhibit D attached.

Executive Order No. 3101 dated November 16, 1981 effected the set-aside. However, the MKIAR was not formally taken out of GL No. S-4191 until the Board's action of June 13, 1997, Item D-2. A Partial Withdrawal From GL No. S-4191 was thereafter executed by UH and the Board on March 23, 1998.

At its meeting of September 24, 1982, Item F-4, the Board authorized the Division of Forestry and Wildlife to hold public hearings (after-the-fact) on the proposed withdrawal of approximately 13,328.054 acres from the Mauna Kea Forest Reserve, so that the withdrawn lands could be included in the leases to UH. After public hearings, the Board approved the withdrawal of the lands from the forest reserve at its meeting of March 22, 1985, Item C-2. By Governor's Executive Order No. 3710 dated August 7, 1997, lands with a net area of 11,269.554 acres (after excluding the MKIAR) were officially withdrawn from the forest reserve.

At its meeting of September 27, 1985, Item F-2, the Board approved the grant of a perpetual, non-exclusive easement to the Hawaii Electric Light Company, Inc. (HELCO) for a power and communication line extending from Saddle Road to Mauna Kea summit.

At its meeting of February 25, 2011, Item K-1, the Board approved CDUP HA-3568 for the Thirty-Meter Telescope (TMT) while simultaneously ordering on the Board's own motion the holding of a contested case proceeding and the appointment of a hearing officer, Item K-2. A contested case followed with the Board approving the findings of fact, conclusions of law, and decision and order on April 12, 2013.

General Lease No. S-5529

At its meeting of February 14, 1986, the Board approved CDUP HA-1819 for the subdivision of an approximately 21-acre site out of the Mauna Kea Forest Reserve for the Hale Pohaku Mid-Level Facilities. At its meeting of February 28, 1986, Item F-14, the Board approved a 55-year lease to UH for approximately 21 acres covering the Hale Pohaku Mid-Level Facilities, long-term construction camp and staging area. General Lease No. S-5529 was thereafter executed between the Board and UH with a commencement date of February 28, 1986 and a termination date of February 28, 2041. The final area of the lease premises was 19.261 acres.

Grant of Easement No. S-4679

On March 1, 1974, the Governor approved the Environmental Impact Statement for the construction of an access road between Hale Pohaku and the Mauna Kea summit. At its meeting of June 27, 1974, Item H-7, as amended, the Board approved CDUP HA-537 for the construction of the access road. At its meeting of October 25, 1974, Item F-8, as amended, the Board approved the issuance of a term easement to UH for roadway purposes over the access road. The Board additionally issued a construction right-of-

entry to the Department of Transportation to build the road. Grant of Easement No. S-4697 covering the road was thereafter issued to UH as of September 8, 1981. The easement is coterminous with GL No. S-4191, ending on December 31, 2033.

Management Plans

At its meeting of February 11, 1977, Item H-10, the Board adopted the first management plan for Mauna Kea. The management plan served as a policy framework for the management of Mauna Kea from the summit to about the 6,000 foot elevation. It stated jurisdictional responsibilities for specific resources and uses, and defined specific uses and facilities to be allowed. This development plan evolved and expanded over the years, culminating in the Comprehensive Management Plan mentioned above, and discussed in further detail below.

At its meeting of December 16, 1983, Item H-5, the Board amended the plan as to the permissibility of overhead power lines and the paving of the summit access road. At its meeting of February 10, 1984, Item H-4, the Board approved CDUP HA-1573 for the installation of a permanent power line and improvements to the Summit Access Road, and also approved UH's revised management plan, with certain amendments. At its meeting of February 22, 1985, Item H-6, the Board accepted and approved the Final Management Plan under CDUP HA-1573.

At its meeting of March 10, 1995, Item H-2, as amended, the Board approved a revised management plan to include a commercial activities element under CDUP HA-1573A. The revised plan allowed a limited number of commercial tour permits so operators could take customers up the mountain for various recreational activities. At its meeting of December 15, 2000, Item D-28, as amended, the Board approved the transfer of commercial permitting authority to UH.

Also in 2000, UH adopted the Mauna Kea Science Reserve Master Plan. Nine years later, the Mauna Kea Comprehensive Management Plan ("CMP") and its subplans (Cultural Resources Management Plan, Natural Resources Management Plan, Public Access Plan, and Decommissioning Plan), were adopted by the Board at its meetings of April 9, 2009, Item K-1, and March 25, 2010, Item K-1, respectively.

There are twelve observatories currently operating with supporting infrastructure within the MKSR. The 2000 Master Plan for the UH Management Areas limited observatory development to the 525-acre Astronomy Precinct leaving the remaining 10,763 acres of the MKSR as a science reserve and buffer zone which has been designated a Natural/Cultural Preservation Area managed by UH in coordination with the Board pursuant to the CMP and subplans.

Environmental Analysis

The new leases would reflect recent changes in the management of the UH Management Areas adopted by the Board of Land and Natural Resources such as the CMP and its subplans. While not specifically required for the current request, an analysis was previously conducted of the potential impacts of the existing uses on historic and cultural resources within the UH Management Areas during the preparation of the CMP and its subplans. A cornerstone of the CMP is a recognition that Mauna Kea is a cultural landscape where historic and cultural resources including traditional and customary Native Hawaiian practices must be addressed through the analytical framework set out in the Hawaii Supreme Court's decision in *Ka Pa 'akai O Ka 'Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000) ("*Ka Pa 'akai*"). At a minimum, this framework requires that: (1) the identity and scope of "valued cultural, historical, or natural resources" in the UH Management Areas, including the extent to which traditional and customary Native Hawaiian rights are exercised; (2) the extent to which those resources – including traditional and customary Native Hawaiian rights – will be affected or impaired by the proposed action or use; and (3) the "feasible action", if any, to be taken to reasonably protect Native Hawaiian rights if they are found to exist.

The *Ka Pa 'akai* analytical framework was discussed extensively in the Final Environmental Assessment for the Mauna Kea Comprehensive Management Plan for the University of Hawaii Management Areas in April 2009. The CMP and its subplans adopted by the Board of Land and Natural Resources on April 9, 2009 and March 25, 2010, respectively, also address the requirements of *Ka Pa 'akai* as follows:

1. The CMP and the many archaeological surveys or ethnographic studies undertaken for the UH Management Areas, including the Archaeological Inventory Survey (AIS) Report for the Mauna Kea Science Reserve (PCSI, 2011), the AIS Report for the Astronomy Precinct within the Mauna Kea Science Reserve (PCSI, 2010), the AIS Report for the Mauna Kea Access Road Management Corridor (PCSI, 2010), the Architectural Inventory Survey of Hale Pōhaku Rest Houses 1 and 2 and Comfort Station (PCSI, 2010), the Archaeological Study and Assessment for the TMT Ancillary Facilities at Hale Pohaku (CSH, 2009), and Kepa and Onaona Maly's *Mauna Kea, Ka Piko Kaulana o ka Aina, A Collection of Native Hawaiian Traditions, Historical Accounts and Oral History* (Kumu Pono Associates, 2005), identified the valued cultural and historical resources, including traditional and customary practices exercised within the UH Management Areas.

2. The CMP and its subplans describe the threats or impacts to these valued resources by existing and continuing uses and activities within the UH Management Areas. Many of the human use impacts are unintentional, caused by uneducated visitors and facilitated by loose regulation and minimally managed access. Threats from various user groups vary in type and intensity and are factors that are being considered in the

management recommendations. Other threats, such as climate change, act over a longer time frame and are more difficult to quantify and correlate with specific impacts.

3. The third step of the *Ka Pa'akai* analysis requires the consideration of “feasible actions” or in this case the management actions to be taken to reasonably protect these valued resources within the UH Management Areas. The management actions recommended for implementation in the CMP and its subplans, including those described in detail in the Cultural Resource Management Plan, set out specific and feasible measures to mitigate the effects and impact of existing and continuing use within the UH Management Areas. The management actions consistently recommend an approach that emphasizes education and orientation as cost effective tools, as well as information gathering, management measures, and regulations and enforcement to preserve and protect cultural, historical and natural resources, including traditional and customary Native Hawaiian practices. The CMP also identified the need for legislative authority to allow UH to adopt regulations to effectively manage and protect resources on public lands leased on Mauna Kea.

In 2009 the State Legislature passed Act 132, which, among other things, authorized UH, in consultation with the Office of Hawaiian Affairs, to promulgate administrative rules governing public and commercial activities within the UH Management Areas consistent with the administrative rules of the Division of Forestry and Wildlife relating to forest reserves and natural area reserves. The intent of the law is to protect “valued cultural, historical and natural resources” within the UH Management Areas by allowing UH to enforce such protections through the imposition of fines. Once approved, the rules will identify permissible and prohibited activities. They will also provide clear lines of authority for UH to carry out its stewardship responsibilities, however, the ultimate authority over these lands will remain with the Board as defined in the CMP. More importantly, the act established the Mauna Kea Lands Management Special Fund into which fees are deposited. Fees deposited into the special fund can only be applied toward the management of the resources within UH Management Areas. The new leases requested by UH for the MKSR and Hale Pohaku will also provide a basis for implementing and enforcing the management actions described in the CMP and its subplans for the protection of these resources beyond the current expiration date of the existing leases and does not constitute an improper delegation of authority to UH.

The three combined UH Management Areas under the two existing leases and grant of easement cover approximately 12,034 acres and were the subject of the Final Environmental Assessment for the Mauna Kea Comprehensive Management Plan for the University of Hawaii Management Areas in April 2009. In reviewing the environmental impact of the management framework in the draft CMP, the study addressed past and existing uses as well as considered management actions and objectives for anticipated future uses within the UH Management Areas. It also concluded that CMP would have no significant impact on the natural and cultural resources on Mauna Kea. The proposed

uses within the areas under the new leases for the MKSR and Hale Pohaku have existed since the inception of the first lease in the 1960's and are continuing.

Special Lease Terms

UH has requested revisions to a number of the standard lease provisions found in the Department of the Attorney General's current template for direct leases to government agencies. A copy of the proposed lease for the MKSR redlined to show changes requested by UH is attached as Exhibit E, and a copy of the proposed Hale Pohaku facilities lease redlined to show requested changes is attached as Exhibit F.

The lease form that the Department of the Attorney General uses for the new leases to government agencies contains a provision regarding improvements that reserves to the Board:

Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

The present request involves the mutual cancellation of two existing leases and the issuance of new direct leases for the purposes discussed above. Ownership of the improvements constructed by UH and its sublessees during the terms of GL No. S-4191 and GL No. S-5529 should remain with UH into and through the term of the new lease. Accordingly, staff recommends that the standard "Ownership of improvements" provision be revised to reserve to the Board:

Ownership of improvements. The ownership of all improvements of whatever kind or nature located on the land prior to or on the commencement date of [General Lease No. S-4191 or General Lease No. S-5529, as applicable], and excluding those improvements constructed by the Lessee and its sublessees during the term of [General Lease No. S-4191 or General Lease No. S-5529, as applicable] and the term of this lease [i.e., the new UH leases] and this lease unless provided otherwise.

The standard lease at paragraph 13 on page contains the following indemnity provision:

Indemnity. The Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or

enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

Similar to the concerns held by the State and its agencies regarding contractual indemnification provisions, UH also has a concern regarding the use of these provisions and has proposed retaining the indemnity language in current lease for the Hale Pohaku Mid-Level Facilities (GL No. S-5529):

Indemnity. The Lessee shall be responsible for damages or injury caused by Lessee's concessionaires and sublessees, or Lessee's agents, officers, and employees in the course of their employment to the extent that the Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and the Lessee shall pay for such damages and injury to the extent permitted by law and approved by the Hawaii Legislature.

The standard lease form at paragraph 22 relates to hazardous materials and requires the lessee to obtain the Board's consent prior to the storage and use of hazardous materials on the premises. UH already provides the Board with a list of such materials in the course its management responsibilities pursuant to the CMP. Most recently, all hazardous materials, including fuels, used or stored within the UH Management Areas were identified and listed on Table 5-4 of the Final Environmental Assessment for the CMP adopted by the Board in April 2009. UH will continue providing updates to the list and has proposed amending the provision requiring the Board consent. Similar to its request for an amendment to the general indemnity, above, UH has requested retaining the same indemnification clause for hazardous material liability used in the Hale Pohaku Mid-Level Facilities (GL No. S-5529):

Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business where the Lessee has provided the

Lessor with a list that provides the identity of such materials used or stored by Lessee or its approved Sublessees or Concessionaires in the ordinary course of their business and in compliance with all applicable federal and state regulations. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

~~Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.~~

Lessee agrees to be responsible for any damages and claims resulting from the release of hazardous material on the premises caused by the Lessee's concessionaires and sublessees or Lessee's agents, officers, and employees in the course of their employment. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

The standard lease form at paragraph 35 requires a Phase 1 environmental site assessment prior to termination of the lease. Given the size of the MKSR and the requirement that all future astronomy facilities will be limited to the 525 acre Astronomy Precinct, UH is requesting that this provision in the MKSR lease, and not the lease for Hale Pohaku, be amended to limit this requirement to all observatory sites within the MKSR:

Phase I environmental site assessment. Prior to termination or revocation of the subject lease, Lessee shall conduct a Phase I environmental site assessment of all observatory sites within the Mauna Kea Science Reserve and conduct a complete abatement and disposal of any such sites, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination or revocation, unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee.

UH has also requested the following special conditions to be added as paragraph 37:

Other conditions etc. The Lessor and Lessee agree that the lease shall be subject to the following Special Conditions:

a. The lease shall be subject to all existing subleases entered into by the Lessee and approved by the Lessor pursuant to General Lease No. S-4191 dated June 21, 1968 and which subleases shall remain in full force and effect until December 31, 2033 (provided that this lease also remains in effect), or until such time as the subleases are earlier terminated or otherwise renegotiated;³

b. The demised premises are within the State Land Use (SLU) Conservation District and all uses shall comply with the rules and regulations of the State Conservation District including but not limited to Hawaii Revised Statutes ("HRS") Chapter 183C and Hawaii Administrative Rules ("HAR") Chapter 13-5;

c. Lessee shall comply with State rules and regulations related to historic preservation including but not limited to HRS Chapter 6E, and HAR Chapters 13-197, 13-198, 13-275 through 13-284 and 13-300, and any amendments of or supplements to such historic preservation regulations;

³ This provision is relevant only to the MKSR and will not be included in the new lease for the Hale Pohaku Mid-Level Facilities.

d. The demised premises shall be managed pursuant to management plans approved by the BLNR, including the Mauna Kea Comprehensive Management Plan and sub plans - Natural Resources Management Plan, Cultural Resources Management Plan, Decommissioning Plan and Public Access Plan, and any amendments of or supplements to management plans approved by the Board of Land and Natural Resources for the demised premises;

e. All fees, including any from existing or future subleases, collected by the Lessee for the use of ceded lands pursuant to Act 132 (SLH 2009) shall be deposited into the Mauna Kea Lands Management Special Fund. The amount to be deposited shall be net of the funds required by law to be transferred to the Office of Hawaiian Affairs for the use of ceded lands;

f. All public and commercial activities, including recreational activities, shall be governed by administrative rules promulgated pursuant to the authority granted Lessee by Act 132 (SLH 2009). In addition, Lessee shall consult with the Office of Hawaiian Affairs and Division of Forestry and Wildlife of the Department of Land and Natural Resources on the development of administrative rules in compliance with Act 132 (SLH 2009);

g. The Constitution of the State of Hawaii mandates the protection of recognized customary and traditional native Hawaiian rights subject to State regulation. The lease shall be subject to the right of Native Hawaiians to exercise protected traditional and customary practices within the demised premises as provided under the laws of the State of Hawaii;

h. The Lessee has established a management structure to manage the demised premises which structure includes the Office of Mauna Kea Management at the University of Hawaii at Hilo, the volunteer community-based Mauna Kea Management Board and the Kahu Kū Mauna advisory council on Hawaiian cultural matters. Any changes in the management structure shall be made in consultation with the Board of Land and Natural Resources as provided by the Mauna Kea Comprehensive Management Plan;

UH has requested a modification to the standard lease form provision at paragraph 27 which reserves the right of the State to withdraw any portion of the premises. The following modification would require that the lessor use its best efforts to avoid

impacting any existing telescope facility in the withdrawal of any lands and that the value paid for the loss of such improvements described in paragraph 27 include costs incurred for decommissioning a telescope facility as a result of the withdrawal:

i. In the event Lessor exercises its right of withdrawal to any portion of the premises pursuant to paragraph 27 of the lease, it shall use its best efforts to avoid impacting any existing or continuing telescope or observatory uses including those uses under subleases entered into by the Lessee with third parties and approved by the Board of Land and Natural Resources; provided, however, upon the withdrawal or taking of land on which any permanent improvements have been constructed by Lessee or Sublessee, the value to be paid by Lessor pursuant to paragraph 27 shall also include the cost of decommissioning such improvements including site restoration as required in the Decommissioning Plan approved by the Board of Land and Natural Resources in March 2010; and

i. Should this lease be rendered or declared invalid, illegal, or unenforceable by a court of competent jurisdiction, such invalidation shall cause, without further action, General Lease S-4191 dated June 21, 1968 to be revived in its entirety for the duration of the term therein, unless and until the parties subsequently agree otherwise. The parties expressly acknowledge that it is their respective intent that this lease shall be replaced in its entirety by General Lease S-4191 dated June 21, 1968 should this lease be declared invalid, illegal, or unenforceable. The parties agree this is reasonable in view of the parties' respective interests.

Additional Matters

UH has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Agency Comments

Staff solicited comments on UH's request from the agencies listed below, with the following results.

Agency	Comments
State:	
Department of Transportation, Highways Division	The proposed actions "will not impact our State highway facilities. Of course any planned or

	future expansion of facilities or functions would likely require a traffic assessment, but that does not appear to be the point of the lease actions.”
Forestry and Wildlife	See Exhibits G and H attached and discussion below.
Office of Conservation and Coastal Lands	No comments
State Parks	Requested a clarification that the MKIAR is under the Natural Area Reserve Commission (and not State Parks). Submittal revised accordingly.
Historic Preservation	See Exhibits I and J attached and discussion below.
Engineering	No comments
Commission on Water Resource Management	No comments
Conservation and Resources Enforcement	No response
Department of Hawaiian Home Lands	No response
Office of Hawaiian Affairs	See Exhibits K and L attached and discussion below.
County of Hawaii:	
Planning Department	The County has no land use jurisdiction in the subject areas.
Property Management	No comments
Public Works	No response
Police Department	No comments
Environmental Management	No comments
Civil Defense	No comments
Federal:	
Department of Transportation	No response
Fish & Wildlife Service	No response
Department of the Army	No response

DOFAW’s comments, attached as Exhibit G, relate to four main issues. The first issue is the forest reserve status of the UH lease and easement areas. Staff has confirmed that these areas were formally removed from the Mauna Kea Forest Reserve by Governor’s Executive Order No. 3710.

The second issue is the power line easement to HELCO that the Board approved on September 27, 1985, Item F-2. As the DOFAW comments indicate, the grant of easement has not been finalized because the survey of the easement corridor was not completed. The location of the

easement is important to DOFAW because a part of it passes through the MKIAR. DOFAW seeks clarity on the delineation of the easement so that it can monitor HELCO's work MKIAR when maintenance and upgrades are necessary. Land Division staff agrees that the easement should be finalized, and is including an applicant requirement above that UH provide an as-built survey of the easement corridor prior to the new leases being executed. In UH's letter responding the DOFAW comments, UH explains that the survey was completed in 2011 and will be provided to Land Division. See Exhibit H. Accordingly, staff is including an Applicant Requirement above that UH submit the completed survey before the new leases are issued. The new leases will reflect the easement as an encumbrance.

The third issue DOFAW raises is that the visitor facilities are inadequate for the commercial activities and public use occurring on the mountain. DOFAW requests UH "to develop a master plan for the Hale Pohaku Visitor Station that takes into account current needs and future growth of use. We have received requests from [UH] to expand parking into the Mauna Kea Forest Reserve, but feel it would be better to develop a plan, rather than deal with the current shortage of space in a piece-meal manner." UH responds that the CMP and its sub-plans recognize the inadequacy of the visitor center to meet current needs, and that UH is awaiting the release of CIP funds appropriated by the 2013 legislature to study and design infrastructure improvements including a parking lot and visitor traffic pattern.

The fourth point that DOFAW makes is that it is under a federal court order to remove sheep from the Palila critical habitat area on Mauna Kea. While the UH Management Areas are mostly above of the critical habitat area, there is a concern the lease premises could serve as a reservoir for animals that will transit to the lower elevations in the critical habitat to forage. "DOFAW and UH will need to work cooperatively to ensure that these animals are removed and do not impact the court order." UH responds that it will cooperate with DOFAW on the issue of sheep removal.

The State Historic Preservation Division (SHPD) submitted comments attached as Exhibit I. In short, SHPD recommended that UH "pursue due diligence and ensure that extensive and appropriate consultation and public outreach take place in order to fully address all of the potential effects that this proposed action will have. Until such time that a record of consultation has been submitted, SHPD cannot comment at this time and we look forward to continued consultation in order to provide an appropriate determination of effect for the current proposed action. UH's response is attached as Exhibit J. To summarize UH's position, UH's present request is limited to the lease extensions and covers those uses that have previously been assessed pursuant to HRS Chapter 343 and approved by the Board under HRS Chapter 183C or the earlier regulations covering uses within the conservation district. See Exhibit J.

OHA's comments, attached as Exhibit K, address four issues. The first is that the lease cancellations and re-issuances should not be found exempt under HRS Chapter 343. OHA's position is that the lease extensions can be viewed as part of a larger project that requires environmental review. In UH's response, attached as Exhibit L, UH clarifies that the lease

extensions do not seek authorization for the construction of additional facilities, and that UH is not arguing that such facilities qualify for exemption under HRS Chapter 343. Rather, the lease extensions allow for the continuation of the presently permitted operations and facilities.

The second issue for OHA is that new 65-year leases may constrain the Board's ability to make best use of the Mauna Kea lands in the future. UH responds that the new leases will allow for the Board to withdraw areas from the leases in the event the Board determines that areas are needed for other uses.

The third comment from OHA is that new leases should require adequate compensation for the sublease of the lands. UH responds that future subleases will require the sublessees to pay rent that will provide a significant portion of the funding required for UH to carry out its management and stewardship responsibilities.

OHA's fourth comment is that conditions on the termination of the current leases should be fulfilled prior the execution of new leases. Specifically, OHA states that a Phase I environmental site assessment (Phase I) should be completed prior to the current leases being terminated. However, the current leases do not require a Phase I. That is a requirement that is being included in the new leases.

Staff appreciates the statement made by SHPD and echoed by other concerned parties that "Mauna Kea is a location of significant cultural importance for the Native Hawaiian community and a known site for traditional and cultural practices." However the Board generally does not require an environmental assessment or environmental impact assessment to extend a lease and its existing uses. Rather, lease extensions are determined to be exempt because they are "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR § 11-200-8(a)(1)]." Accordingly, to be consistent with the Board's prior practice, the staff recommendation is to grant UH's requests.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed dispositions as provided by Chapter 343, HRS, and Chapter 11-200, HAR, the dispositions will probably have minimal or no significant effect on the environment and are therefore exempt from the preparation of an environmental assessment.
2. Authorize the mutual cancellation of General Lease No. S-4191, University of Hawaii, Lessee, subject to the following:
 - a. The standard terms and conditions of the most current mutual cancellation of lease document form, as may be amended from time to time;

- b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to the University of Hawaii covering the Mauna Kea Science Reserve under the terms and conditions cited above, which are by this reference incorporated herein, and further subject to the following:
 - a. The lease shall be substantially in the form of Exhibit E attached hereto and shall be subject to the subleases listed in Table 2 above;
 - b. In the event the new lease is declared to be invalid, illegal, or unenforceable by a court of competent jurisdiction, then General Lease No. S-4191 dated June 21, 1968 shall be revived in its entirety for the duration of the term therein, unless and until the Board and the University of Hawaii agree otherwise, as provided in subparagraph 37.j. of the new lease;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 4. Authorize the mutual cancellation of General Lease No. S-5529, University of Hawaii, Lessee, subject to the following:
 - a. The standard terms and conditions of the most current mutual cancellation of lease document form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 5. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to the University of Hawaii covering the Hale Pohaku Mid-Level Facilities under the terms and conditions cited above, which are by this reference incorporated herein, and further subject to the following:
 - a. The lease shall be substantially in the form of Exhibit F attached hereto;

- b. In the event the new lease is declared to be invalid, illegal, or unenforceable by a court of competent jurisdiction, then General Lease No. S-5529 dated February 28, 1986 shall be revived in its entirety for the duration of the term therein, unless and until the Board and the University of Hawaii agree otherwise, as provided in subparagraph 37.j. of the new lease;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
6. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the extension, amendment and restatement of Grant of Easement No. S-4697 so that UH holds a 65-year term, non-exclusive easement covering the Mauna Kea Access Road between Hale Pohaku and the MKSR under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- a. The standard terms and conditions of the most current extension, amendment and restatement of term easement document form, as may be amended from time to time;
 - b. The easement shall be coterminous with the new leases to Applicant covering Tax Map Keys: 3rd/ 4-4-15:09 & 12;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

Land Board Meeting: December 13, 2013; D-15:
Deferred.²

²UH committed to doing an EIS before coming back to the BLNR and asking for a new 65-year term lease.

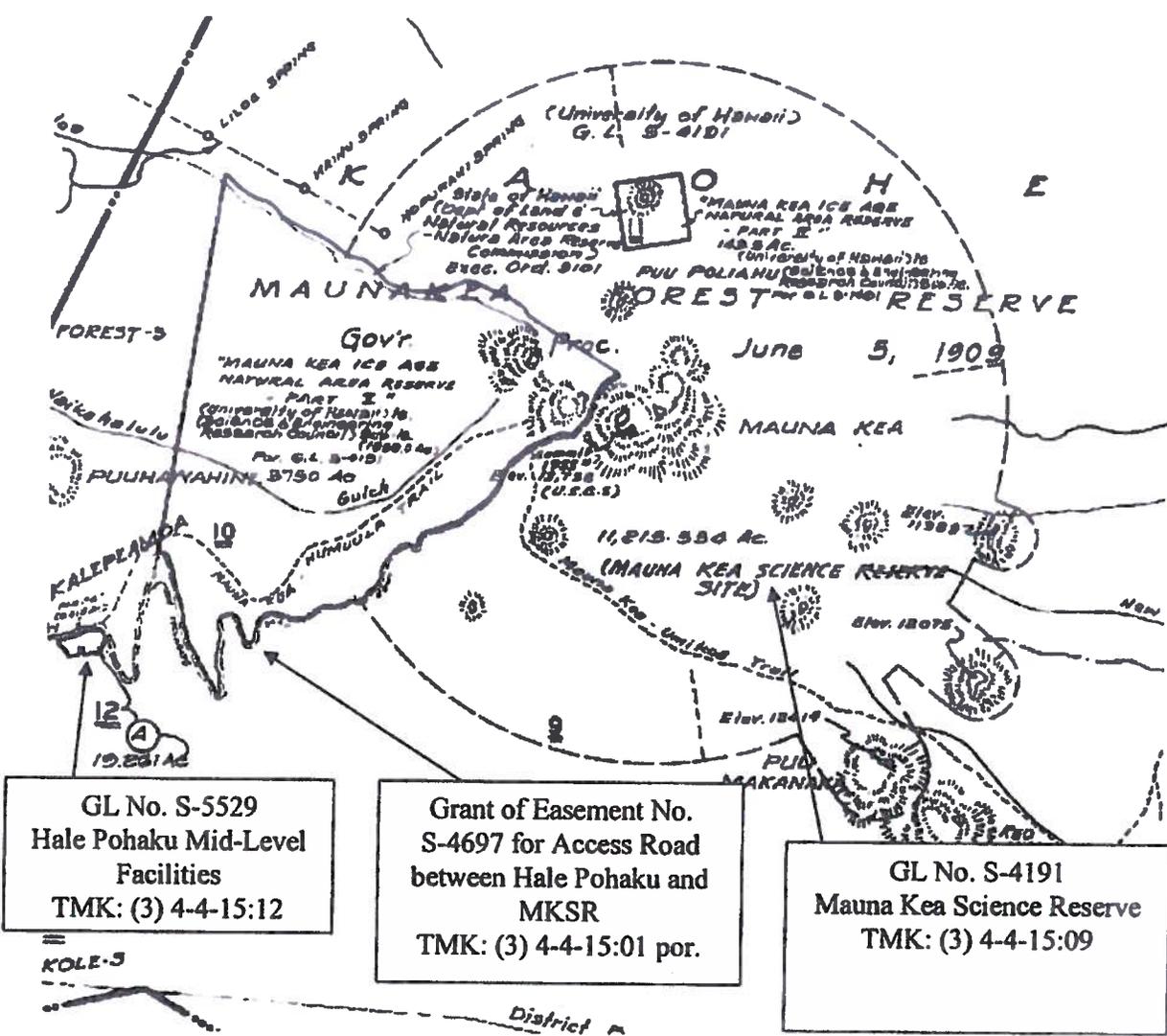
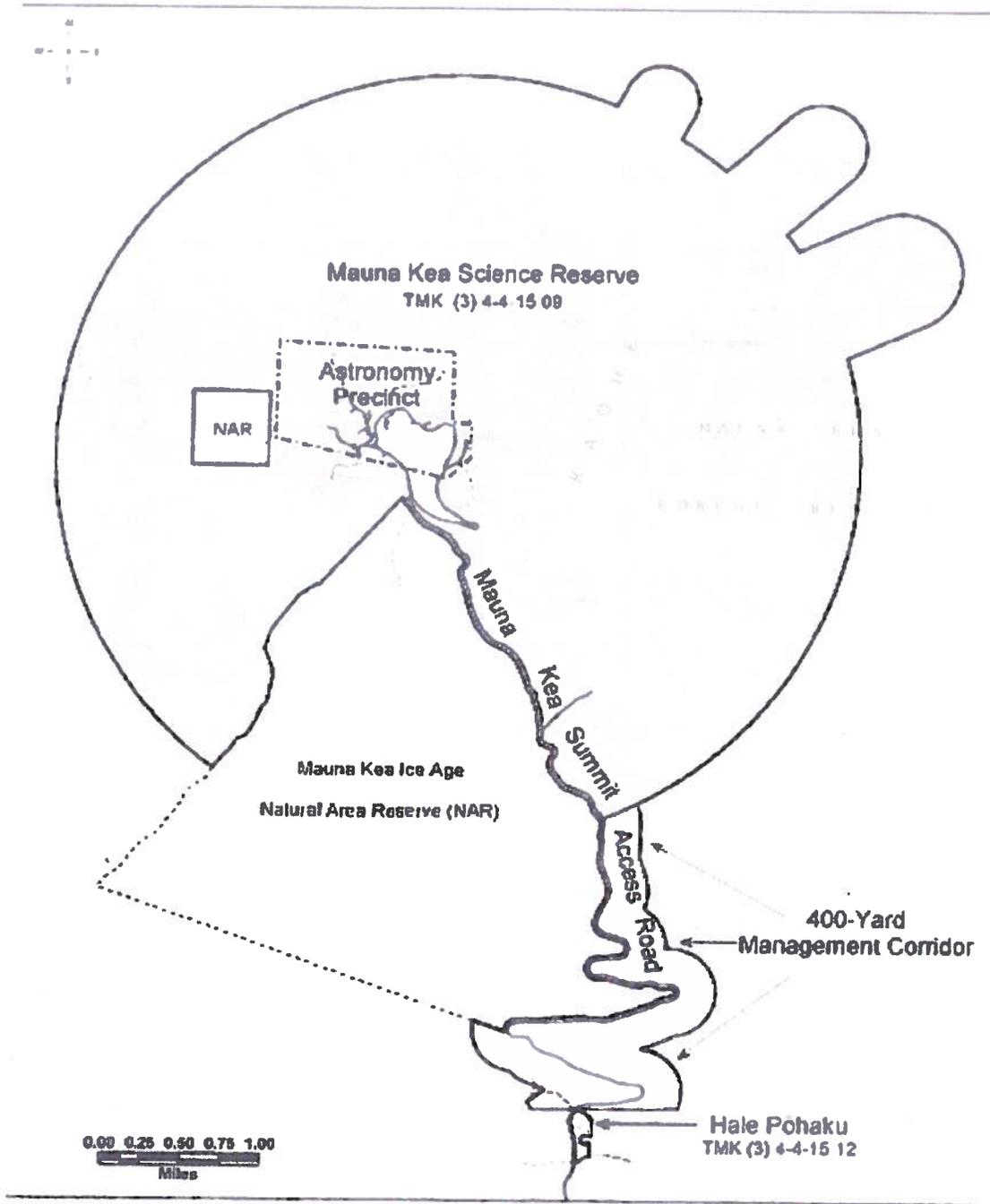


EXHIBIT A



UH Management Areas

EXHIBIT A

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
DIVISION AND OCEAN RECREATION
DIVISION OF CONSERVATION
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESEARCH DEVELOPMENT
DIVISION
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

- Project Title:** Mutual Cancellation of General Lease No. S-4191 to the University of Hawaii (UH) for the Mauna Kea Science Reserve and Issuance of New Direct Lease to UH for Mauna Kea Science Reserve Purposes; Mutual Cancellation of General Lease No. S-5529 to UH for the Hale Pohaku Mid-Level Facilities and Issuance of New Direct Lease to UH for Hale Pohaku Mid-Level Facilities Purposes; Extension, Amendment and Restatement of Grant of Term Easement S-4697 to UH to Extend the Easement Term by 65 Years and Update the Easement Instrument with Current Provisions Approved by the Department of the Attorney General
- Project Number:** PSF Nos. 13HD-147, -148 & -149
- Project Location:** Kaohe, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 por., 09 & 12
- Project Description:** Cancel existing leases to UH for Mauna Kea Science Reserve (MKSR) and Hale Pohaku Mid-Level Facilities, issue a new direct 65-year leases to UH for these purposes, and amend an access and utility easement over the portion of the Mauna Kea Access Road between MKSR and Hale Pohaku so that it is coterminous with the new leases.
- Consulted Parties:** Office of Conservation and Coastal Lands; Division of Forestry and Wildlife, and others
- Exemption Class No.:** In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously

EXHIBIT B

existing [HAR § 11-200-8(a)(1)]."

**Exemption Item No.
And Description:**

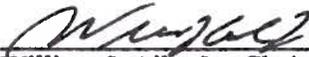
Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

This exemption is appropriate because UH has leased the MKSR since 1968 under General Lease No. S-4191, and has leased Hale Pohaku since 1986 under General Lease No. S-5529 for midlevel facilities purposes. The existing leases (with 20 years remaining on the term under GL S-4191 and 28 years remaining under GL S-5529) will be cancelled and new leases will be issued for 65-year terms for the same purposes. Additionally, Grant of Easement No. S-4697 extended, amended and restated. The easement, which is scheduled to terminate on December 31, 2033, will be extended by approximately 45-years to be coterminous with the new leases.

While these actions are part of a multi-phase project, the cancellation of the existing leases, issuance of new leases, and amendment of the grant of easement in themselves will result in no material change or significant cumulative impact. If further actions are taken that result in a material change, UH will be required to be in compliance with Chapter 343.

Recommendation:

The cancellation of General Lease Nos. S-4191 and S-5529, the issuance of new direct leases to UH, and the extension, amendment and restatement of Grant of Easement No. S-4697 in themselves will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the action is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to any future use of the lands, the UH shall be responsible for compliance with Chapter 343, HRS, as amended.



William J. Aila, Jr., Chairperson



Date



**UNIVERSITY
of HAWAII**
SYSTEM

Board of Regents

August 22, 2013

William J. Aila, Chairperson
Attn: Russell Y. Tsuji, Land Division Administrator
Department of Land and Natural Resources
P.O. Box 621
1151 Punchbowl Street
Honolulu, Hawai'i 96809-0621

Subject: Request for Issuance of New Master Leases for (a) the Mauna Kea Science Reserve and (b) the Hale Pōhaku Mid-Level Facilities, and an Amendment of the Grant of Easement for the Mauna Kea Observatory Access Road; Lessee: University of Hawai'i; TMK 3/4-4-015:01 (part), 09 and 12; Kaohe, Hāmākua District, Island, County and State of Hawai'i

Dear Chairman Aila:

The University of Hawai'i ("UH") respectfully requests the termination of the existing leases for the Mauna Kea Science Reserve (G.L. No. S-4191) and Hale Pōhaku Mid-Level Facilities (G.L. No. S-5529), with the issuance of new 65-year General Leases for these two parcels. In addition, the UH requests an amendment to the Grant of Easement for the Mauna Kea Observatory Access Road (Easement No. S-4697) to be coterminous with the new General Leases. The reasons for making this request are fourfold: 1) the need to address internal changes made by the UH in how it manages lands on Mauna Kea; 2) the need to reflect management actions and reporting requirements adopted by the Board of Land and Natural Resources ("BLNR"); 3) to assist in implementing legislation concerning the Mauna Kea lands managed by UH; and 4) to provide the basis for developing sublease agreements with current and any potential future telescope projects.

Summary of UH Land Tenure Documents

The UH presently holds the lease to the summit of Mauna Kea on the Island of Hawai'i identified as the Mauna Kea Science Reserve ("MKSR"), covering approximately 11,288 acres within the State's Conservation District Resource subzone. The public land lease for the MKSR was issued to UH by the BLNR in 1968 for the term of 65 years ending on December 31, 2033. UH also leases the Hale Pōhaku Mid-Level Facilities ("Hale Pōhaku") covering an area of just over 19 acres with a termination date of February 27, 2041. These two properties, together with the Mauna Kea Observatory Access Road corridor ("Summit Access Road"), collectively constitute the UH Management Areas within the ahupua'a of Kaohe in the district of Hāmākua.

New Management Policy for Mauna Kea

In June 2000 the UH Board of Regents ("BOR") adopted the Mauna Kea Science Reserve Master Plan ("Master Plan") which provided a new "policy framework for the responsible stewardship and use" of the UH Management Areas. An important aspect of the Master Plan was the establishment of a new management structure comprised of the Office of Mauna Kea Management ("OMKM") which is based at UH Hilo and is advised by the volunteer, community-based Mauna Kea Management Board ("MKMB"), and a native Hawaiian advisory council ("Kahu Kū Mauna"). In addition, the Master Plan

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Honolulu, Hawai'i 96822
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EXHIBIT C

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William J. Aila, Chairperson
Page 2
August 22, 2013

requires any proposed projects to be reviewed and vetted by Kahu Kū Mauna and the MKMB. This new management structure is also responsible for developing and implementing management policies and programs for protecting Mauna Kea's cultural and natural resources.

BLNR Approved Management Plans

The BLNR adopted the Mauna Kea Comprehensive Management Plan and four supplementary sub-plans in April 2009 and March 2010, respectively. These documents contain management actions and strategies for protecting, preserving and enhancing the cultural, scientific, educational and natural resources within the UH Management Areas of Mauna Kea. UH Hilo and OMKM are specifically charged by the BOR with the implementation of the Comprehensive Management Plan.

Legislation

In 2009 the State Legislature passed Act 132 that, among other thing, authorized the UH, in consultation with the Office of Hawaiian Affairs, to promulgate administrative rules governing public and commercial activities within the UH Management Areas. The intent of the law is to protect the resources by allowing UH to develop and implement rules enforceable through the penalty of fines. Once approved, the rules will identify permissible and prohibitive activities. They will also provide clear lines of authority for UH in carrying out its stewardship responsibilities. More importantly, the act established the Mauna Kea lands management special fund into which fees are deposited. Fees deposited into the special fund can only be applied toward the management of the mountain.

Need for Improvements in the Existing Land Tenure Documents for the UH Management Areas

Moving forward, there is a need to address the UH's future land tenure on Mauna Kea beyond 2033. New general leases with a longer term are necessary for UH to enter into meaningful negotiations with current and any potential future telescope projects. UH anticipates that future subleases' rent will provide a significant portion of the funding required for UH to carry out its management and stewardship responsibilities.

The Board of Regents have authorized UH Hilo to work with the Department of Land and Natural Resources on the terms and conditions for new 65-year leases for both the MKSR and Hale Pohaku together with an appropriate amendment extending the term of the existing easement to be coterminous with the two new leases. Of course, the Board of Regents retains the decision-making authority on approval of the final documents

We greatly appreciate the Department's cooperation and assistance on this matter; our staff looks forward to working with the Land Division and the BLNR in completing the process for developing mutually-acceptable terms for surrendering the existing leases and issuing the new leases. Please feel free to contact University of Hawai'i at Hilo Chancellor Donald Straney at 808-974-7444 or by email at dstraney@hawaii.edu if you have any questions or require additional information regarding this request.

Sincerely,



John C. Holzman
Chair, Board of Regents

cc: Dr. Donald Straney, Chancellor, UH Hilo

Prior Conservation District Use Permits, Mauna Kea Science Reserve & Mid-Level Facilities

Telescope Facilities	
UH 0.6-M, Planetary Patrol (removed 1994)	HA-954, 1977 (post facto)
UH 0.6-M Air Force (removed 2008)	HA-954, 1977 (post facto)
UH 2.2-M	HA-954, 1977 (post facto)
Canada-France-Hawaii Telescope	HA-527, 1974
Fiber Optic Cables from Gemini to CFHT	SPA-HA-06-49, 2006
United Kingdom Infrared Telescope	HA-653, 1975
NASA Infrared Telescope Facility	HA-653, 1975
Caltech Submillimeter Observatory	HA-1492, 1982
James Clerk Maxwell Telescope	HA-1515, 1983
W. M. Keck Observatory	
Keck I	HA-1646, 1984
Keck II	HA-2509, 1991
-Carport	Site Plan Approval, 1997
-Temporary Optical Test Sites	HA-SPA-21, 1998
Very Long Baseline Array Antenna	HA-2174, 1988
Japan National Large Telescope (Subaru)	HA-2462, 1991
-Subaru Concrete Walkway	Site Plan Approval, 1997
-Subaru Seepage Pit Collar	SPA-HA-05-08, 2004 (post facto)
Gemini Northern 8-M Telescope	HA-2691, 1993
Smithsonian Submillimeter Array	HA-2728, 1994
UH Hilo 0.9M Telescope	HA-3406, 2007
Thirty Meter Telescope	HA-3568, 2013 (FOF, COL, Decision and Order issued by BLNR on April 12, 2013)
Mid-Level Facilities	
Subdivision & Construction of Hale Pōhaku Mid-Level Facilities	HA-1430, 1982
- Removal of Solar Hot Water Heating System	SPA-HA-03-34, 2002
- Installation of Five Septic Tanks	SPA-HA-05-18, 2005
- Minor Renovations to Visitor Information Station	SPA-HA-06-17, 2005
Subdivision to Create ~21-acre Site for Permanent Mid-Level Facilities	HA 1819, 1986
Other Permits and Approvals	
Site Testing	HA-1314, 1981
Road, Power, Conceptual Management Plan	HA-1573, 1983
-Management Plan	HA-1573, 1985
-Revised Management Plan	HA-1573A, 1995 (DLNR co-applicant)
-Upgrade of Summit Power & Communications Distribution System	Site Plan Approval, 1995
-Fiber-Optics from Pōhakuloa to Hale Pōhaku	SPA-HA-96-05, 1996
Wēkiu Bug Habitat Restoration	OA-SPA-01-03, 2000
Temporary Site Testing within Northwest Plateau	HA-3225D, 2005
Restoration of Jeep Road up to Poli'ahu	SPA-HA-10-04, 2009

EXHIBIT D

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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-_____

THIS LEASE, made this _____ day of _____, 20____, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and UNIVERSITY OF HAWAII, a body corporate, whose address is 2444 Dole Street, Honolulu, Hawai'i 96822, hereinafter referred to as the "Lessee."

WITNESSETH:

The Lessor, pursuant to Section 171-95(a)(2), Hawaii Revised Statutes, and for and in consideration of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises identified as "Mauna Kea Science Reserve", the _____ more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of Sixty-five (65) years, commencing on the _____ day of _____, 2013, up to and including the _____ day of _____, 2078, unless sooner terminated as hereinafter provided.

The annual rent shall be gratis.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal,

phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of ~~this lease~~ General Lease No. S-4191, excluding those improvements constructed by the Lessee and its sublessees during the term of General Lease No. S-4191 and this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including Chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

2. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

3. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

4. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

5. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

6. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

7. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

8. Improvements. The Lessee shall not at any time during the term construct, place, maintain and install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Board and upon those conditions the Board may impose, unless otherwise

provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

Upon termination and/or expiration of the lease and if desired by the Lessor, the Lessee at its expense, shall remove any and all improvements installed or constructed upon the premises and restore said premises to a condition satisfactory to the Lessor.

9. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

10. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

11. Character of use. The Lessee shall use or allow the premises leased to be used solely for a scientific complex, including without limitation thereof telescopes, other research and educational facilities and public service facilities, and as a science reserve being more specifically a buffer zone to prevent the intrusion of activities inimical to said scientific complex.

| Activities inimical to said scientific and educational complex shall include light and dust interference to observatory operation and certain types of electric or electronic installation on the demised lands, but shall not necessarily be limited to the foregoing.

12. Assignments, etc. The Lessee shall not sublease, subrent, transfer, assign, or permit any other person to occupy or use the premises or any portion or transfer or assign this

lease or any interest therein, either voluntarily or by operation of law, without the prior written approval of the Board.

13. Indemnity. The Lessee shall be responsible for damages or injury caused by Lessee's concessionaires and sublessees or Lessee's agents, officers, and employees in the course of their employment to the extent that the Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee, and the Lessee shall pay for such damages and injury to the extent permitted by law and approved by the Hawaii Legislature. ~~The Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.~~

14. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

15. Breach. Time is of the essence in this agreement and if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if Lessee shall fail to observe

and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

16. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the lands occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises was leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

17. Right to enter. The Lessor or the County and

their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

18. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

19. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

20. Surrender or termination. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Board may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

21. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

22. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow

the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, ~~and then only after where the written notice is given to Lessee has provided Lessor with a list that contains of the identity of such materials used or stored by Lessee or its approved Sublessees in the ordinary course of their business and in compliance with all applicable federal and state regulations and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion.~~ If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to be responsible for any damages and claims resulting from the release of hazardous material on the premises caused by the Lessee's concessionaires and sublessees or Lessee's agents, officers, and employees in the course of their employment. These covenants shall survive the expiration or earlier termination of the lease.

~~Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.~~

For the purpose of this lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

23. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

24. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

25. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

26. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

27. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease.

28. Termination by either party. The Lessor and Lessee, by mutual agreement, may terminate this lease at any time without cause, provided that the Lessor and the Lessee are not in breach of any condition herein at the time of the mutual agreement to terminate. This provision can be waived by the parties provided such waiver is in writing and signed by both parties.

29. Non-use and abandonment. If the Lessee shall, at

any time for a continuous period of one (1) year, fail or cease to use, or abandon all or any portion of said premises, this lease shall cease and terminate.

30. Building construction. All building construction shall be in full compliance with all laws, rules and regulations of the federal, state, and county governments and in accordance with plans and specifications submitted to and approved by the Chairperson prior to commencement of construction.

31. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

32. Time of essence Time is of the essence in all provisions of this lease.

33. Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes.

34. Removal of trash. The Lessee shall be responsible for the removal of all illegally dumped trash upon the premises within ninety (90) days from the date of execution of the lease and shall so notify the Lessor in writing at the end of ninety (90) days.

35. Phase I environmental site assessment. Prior to termination or revocation of the subject lease, Lessee shall conduct a Phase I environmental site assessment of all observatory sites within the Mauna Kea Science Reserve and conduct a complete abatement and disposal of any such sites, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination or revocation, unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this

paragraph, all costs and expenses of such performance to be charged to and paid by Lessee.

36. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.

37. Other conditions etc. The Lessor and Lessee agree that the lease shall be subject to the following Special Conditions:

a. The lease shall be subject to all existing subleases entered into by the Lessee and approved by the Lessor pursuant to General Lease No. S-4191 dated June 21, 1968 and which subleases shall remain in full force and effect until December 31, 2033 (provided that this lease also remains in effect), or until such time as the subleases are earlier terminated or otherwise renegotiated;

b. The demised premises are within the State Land Use (SLU) Conservation District and all uses shall comply with the rules and regulations of the State Conservation District including but not limited to Hawaii Revised Statutes ("HRS") Chapter 183C and Hawaii Administrative Rules ("HAR") Chapter 13-5;

c. Lessee shall comply with State rules and regulations related to historic preservation including but not limited to HRS Chapter 6E, and HAR Chapters 13-197, 13-198, 13-275 through 13-284 and 13-300, and any amendments of or supplements to such historic preservation regulations;

ed. The demised premises shall be managed pursuant to management plans approved by the BLNR, including the Mauna Kea Comprehensive Management Plan and sub plans - Natural Resources Management Plan, Cultural Resources Management Plan, Decommissioning Plan and Public Access Plan, and any amendments of or supplements to management plans approved by the Board of Land and Natural Resources for the demised premises;

de. All fees, including any from existing or future subleases, collected by the Lessee for the use of ceded lands pursuant to Act 132 (SLH 2009) shall be deposited into the Mauna Kea Lands Management Special Fund. The

amount to be deposited shall be net of the funds required by law to be transferred to the Office of Hawaiian Affairs for the use of ceded lands;

ef. All public and commercial activities, including recreational activities, shall be governed by administrative rules promulgated pursuant to the authority granted Lessee by Act 132 (SLH 2009). In addition, Lessee shall consult with the Office of Hawaiian Affairs and Division of Forestry and Wildlife of the Department of Land and Natural Resources on the development of administrative rules in compliance with Act 132 (SLH 2009);

fg. The Constitution of the State of Hawaii mandates the protection of recognized customary and traditional native Hawaiian rights subject to State regulation. The lease shall be subject to the right of Native Hawaiians to exercise protected traditional and customary practices within the demised premises as provided under the laws of the State of Hawaii;

gh. The Lessee has established a management structure to manage the demised premises which structure includes the Office of Mauna Kea Management at the University of Hawaii at Hilo, the volunteer community-based Mauna Kea Management Board and the Kahu Kū Mauna advisory council on Hawaiian cultural matters. Any changes in the management structure shall be made in consultation with the Board of Land and Natural Resources as provided by the Mauna Kea Comprehensive Management Plan; and,

hi. In the event Lessor exercises its right of withdrawal to any portion of the premises pursuant to paragraph 27 of the lease, it shall use its best efforts to avoid impacting any existing or continuing telescope or observatory uses including those uses under subleases entered into by the Lessee with third parties and approved by the Board of Land and Natural Resources; provided, however, upon the withdrawal or taking of land on which any permanent improvements have been constructed by Lessee or Sublessee, the value to be paid by Lessor pursuant to paragraph 27 shall also include the cost of decommissioning such improvements including site restoration as required in the Decommissioning Plan approved by the Board of Land and Natural Resources in March 2010.

j. Should this lease be rendered or declared invalid, illegal, or unenforceable by a court of competent jurisdiction, such invalidation shall cause, without further action, General Lease S-4191 dated June 21, 1968 to be revived in its entirety for the duration of the term therein, unless and until the parties subsequently agree otherwise. The parties expressly acknowledge that it is their respective intent that this lease shall be replaced in its entirety by General Lease S-4191 dated June 21, 1968 should this lease be declared invalid, illegal, or unenforceable. The parties agree this is reasonable in view of the parties' respective interests.

Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the

premises; and (3) failure to employ all of the usable portions of the premises.

(f) "Days" shall mean calendar days unless otherwise specified. _____

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on _____.

By _____
Chairperson
Board of Land and
Natural Resources

LESSOR

Its _____

Its _____

LESSEE

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

STATE OF HAWAII)
) SS.
COUNTY OF)

On this _____ day of _____, 20____, before me appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____, respectively of _____, and that said instrument was signed in behalf of said _____ by authority of its _____, and the said _____ and _____ acknowledged said instrument to be the free act and deed of said _____.

Notary Public, State of Hawaii

My commission expires: _____

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Na Kupuna Moku O Keawe
Hanalei Fergerstrom

Kurtistown, Hawaii 96760

Department of Land and Natural Resources
Willam Aila, Chairperson/Director

RE: Submission to record:

Mutual Cancellation of General Lease No. S-4191 to the University of Hawaii (UH) for the Mauna Kea Science Reserve and Issuance of New Direct Lease to UH for Mauna Kea Science Reserve Purposes; Mutual Cancellation of General Lease No. S-5529 to UH for the Hale Pohaku Mid-Level Facilities and Issuance of New Direct Lease to UH for Hale Pohaku Mid-Level Facilities Purposes; Extension, Amendment and Restatement of Grant of Term Easement S-4697 to UH to Extend the Easement Term by Approximately 45 Years and Update the Easement Instrument with Current Provisions Approved by the Department of the Attorney General, Kaohe, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 por., 09 & 12. (HDLO)

This submittal is to support our opposition to the above. Previous hearing on this matter was held on November 8, 2013. After hours of testimony, quorum was lost. The next meeting is set for December 13, 2013. This submittal is intended to be part of the official record and part of the submittals considered prior to the reconvening of the board. Public testimony is expected to continue before the formal vote on the measure. While the December 13, 2013 hearing date is presently not on the DLNR website, this date was given and later confirmed with the secretary of the chair, William Aila.

I would first like to address the ***misinformation***, that is perpetuated, that undermines the sanctity of the Hawaiian Religion (pre-western), violates ancient KAPU, and dismisses historical use of the summit.

EXHIBIT 4

Lets start with description/location:

“Government Lands of Kaohe, Hamakua. Island of Hawaii, identified by Tax Map Keys (xxxxxxx)”.

Kaohe, is one of six Kaohe, that are demarcations of areas known as ***Kuahuiwi*** (Pillars of Bones) from that known as ***Wao Akua*** (Realm of the Gods). It is of essential importance to understand the perpetuation of the idea that any one District could control the upper regions of Mauna Kea, especially the summit, diminishes the sacredness of WAO AKUA, and is practically and historically incorrect. It does not mean that the summit was not used to traverse, but certainly not used to exhibit control, to develop nor occupy, which illustrates the reason that there are so few archeological and historic sites apparent to those confined to the Western Influence. This is further illustrated by the contravention of a Tax Map Key.

As far as Government Lands, that would be the Hawaiian Kingdom, if so governed, and not the State of Hawaii who currently holds these lands in TRUST, as provided by section 5 of the Admissions Act.

It is our contention that this position demonstrates a ***breach of contract***; violation of **US Constitutional law** (1st amendment),(PL 95-341),(PL103-150); violation of **fiduciary responsibilities**, and **abandonment trust obligations** owed to the People of Hawaii; violates the **Endangered Species Act**, and diminishes **critical habitat**; violation of **State of Hawaii Constitution** (article 12 sec.7);

This issue, as stated in the General Leases, really consists of 3 separate leases rolled into one proposal for consideration. I will address each of these leases individually, and will conclude addressing the matter on a whole, which we are in opposition too.

1) General Lease no. S-4191

All of the Mauna Kea is a part of the so-called Ceded Lands Trust, those lands are the stolen lands of the Hawaiian Kingdom and held in TRUST and are not owned by the State of Hawaii. Therefore all of those lands have encumbrances as defined by the 5(f) clause of the State of Hawaii Admissions Act. The beneficiaries are as follows:

(f) The lands granted to the State of Hawaii by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible for the making of public improvements, and for the provision of lands for public use. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing

purposes in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States. The schools and other educational institutions supported, in whole or in part out of such public trust shall forever remain under the exclusive control of said State; and no part of the proceeds or income from the lands granted under this Act shall be used for the support of any sectarian or denominational school, college, or university.

The entire upper level of Mauna Kea where the Astronomy Precinct is located is the most sacred place in Hawaii. It is the area of the Gods, where our most sacred religious activities are conducted here at various times and locations. As all other Religions, the ambiance is a crucial setting, where information transfers from the Gods, to those whom are qualified to receive. Our religion is not different from yours. We seek a quiet, calm, interference free, tranquil environment. Having others, who have **no kuleana**, who dictate or otherwise pretend an authority, is insulting, demeaning, callous, abusive, and offensive. As mentioned before, this is the realm of the Gods, where no man was permitted lest he was well qualified, having gone through all the rituals required of the Priesthood. Even then it was for specific purposes for a minimal amount of time. As was said before, historically **ONLY** those of the upper echelons of priesthood, Alii Kapu, and those tasked with sacred responsibilities, were given access to **Wao Akua**. This was protected by the Kapu system that resulted in death for breach.

Further the Summit of Mauna Kea is identified as a part of the ceded lands trust, as defined in Article 5(f) of the Admission Act. While the University/Education is a beneficiary, it is very hard to comprehend how it can have exclusive control of lands deemed Public when in fact operates, as an exclusive, non transparent, private economic zone, with no direct fiscal contribution to the General Funds that benefit the general public as a whole.

The idea that, all the Telescope development, is petitioned by a single party, the University of Hawaii, is improper. If all the Telescopes were in fact a part of the University of Hawaii's system, and truly a part of the State of Hawaii, then the revenues derived from their operations and use of ceded lands would be deposited into the General Funds of the State of Hawaii just as are other funds derived from the ceded lands. Those funds would then be available to the budget discretions of the State of Hawaii and not held exclusive for the benefit of the University of Hawaii.

The fact that some the telescopes are, in fact, third party sub leases.

This idea that the University should be the front man for Telescopes that are clearly third party sub leases that include other Countries, like the **Japan National Telescope**, **SUBARU**; **Canada-France**; non-direct educational facilities like **NASA** infrared scope; Multinational Monetary Consortiums like the **Thirty Meter Telescope**: are at the cost, of the people of Hawaii. These third party leases I contend are not consistent with the encumbrances, does not serve nor benefit the other beneficiary parties as defined by the 5(f) clause of the admissions Act.

While at first appearance it may seem consistent, clearly utilizing the State Agency/UH veil and allowing them to pay the dollar a year lease while holding

them private is inconsistent with the intent of the 5(f) clause of the admissions act. Fair market value for those leases that are not directly control and utilized by the University of Hawaii for the education of Hawaii students is inconsistent with the encumbrances of 5 (f).

The argument that is used widely is that the University has an opportunity to utilize some of these facilities, WHEN they are not in use. So WHEN is that. I believe that if this is the argument use to not pay fair market value for the subleases. I suggest that a consistent schedule, with clearly define times for Hawaii University Students would be a bit more consistent and beneficial to the education part of Sec 5(F). That would of course include all the facilities including Japan National Telescope, Subaru, Canada-France, as well as the two Keck's and the radio telescopes, etc.

Of Course I maintain that the entire summit is a Hawaiian Religious Site and it is so sacred that NO one, NOR any facility, scientific or not belongs on the summit and invades the sanctity of the realm of the Gods.

I believe that the State of Hawaii has positioned itself to appear to be in abandonment of it's fiduciary responsibilities/ encumbrances by allowing a third party (University of Hawaii) to take what can be described as sole control of lands in the Science Reserve and it's subsection the astronomy precinct, all of which is on ceded lands.

The State of Hawaii also has responsibilities to protect rights of Hawaiian as defined by Hawaii's Constitution Article 12 Section 6 and 7 for Religious, Traditional, Customary, rights including access. The PASH decision further exemplifies those rights and the case of Napeahi vs Wilson describes the of abandoning fiduciary responsibilities.

We also **take issue to the process** currently being undertaken that is on a fast track, especially considering that the current leases are in effect for another 20 years. What seems to be the problem that has required this rush to complete the new leases. Further, if this effort is supposed to be open and transparent, then why has not this proposal been taken out for public meeting especially on the Island of Hawaii where the site is and where the people of the island who will be directly impacted reside.

The University claims that this is not about future development yet an effort to get **exempt from environmental laws** or exemption from a complete EIS including a **cumulative impact statement** for the entire Mountain. They have stated that these leases are part of existing facilities, part of maintenance and continued use. The use of the term of **NO SIGNIFICANT IMPACT** is arbitrary and capricious. As the footprint of astronomy continues to grow, of course there are going to be impacts and some with greater impact than others. We believe that there should be **NO EXEMPTIONS from HRS chapter 343**.

2) Lease No. S-5529 Hale Pohaku Mid Level Facilities:

The current facilities located at the Mid Level consist of several large buildings used **EXCLUSIVELY** for the University of Hawaii. This Lodge/hotel like facilities serves as acclimation point for operators and visiting scientist. Complete with a large kitchen, very large dining area, recreation area and several rooms used by Computer Operators.

As part of the mid level facilities is the visitor's center, concession stand and comfort station along with a small parking area.

This entire area is **CRITICAL HABITAT for the PALILA BIRD**. In the plans is a proposal to increase the size of the parking area to accommodate an

increasing amount of tourist wanting to visit the area. There is certainly a capacity issue here. Since the Office of Mauna Kea Management controls this area as well as the amount of tour operators allowed, Why are there tours allowed anyway. Outside of the view from the summit, there is nothing to see there that the Imiola Center at The University of Hawaii at Hilo does not offer in full.

Once again this entire mid level area is in Critical Habitat for the Palila Bird who's sole source of food is the Mamane Tree. This area is one of the last striving areas of fully mature Mamane. Any new expansion would entail the removal of the mature Mamane trees and thereby diminishing this very fragile critical habitat.

When I try to read the new lease agreements I can't help thinking about an old time street hustle known as the **THREE CARD MONTY**. I GUESS THAT'S THE MOST DISCRIPTIVE WHEN VIEWED AS A WHOLE. I know that I'm not a contract expert but I still see that the ultimate loser of this entire game of shuffling liabilities is the people of the State of Hawaii.

Here we have the STATE, the lessor, who is giving, *gratis* (without reward or consideration) to the Lessee, University of Hawaii **EXCLUSIVE ECONOMIC USE** of those CEDED LANDS located on the summit of **MAUNA KEA**. The University of Hawaii then sub-lease those lands to other Foreign Countries, other Universities, other Military and governmental organizations, and other private multinational corporations for their exclusive use, **without reward or consideration to the beneficiaries of the CEDED LANDS TRUST, who are the PEOPLE OF THE STATE OF HAWAII.**



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board action date to:

Department of Land and Natural Resources
Administrative Proceedings Office
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813
Phone: (808) 587-1496, Fax: (808) 587-0390

- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://hawaii.gov/dlnr/rules/Ch13-1-Official-Rules.pdf>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.

RECEIVED
LAND DIVISION
2013 NOV 23 PM 1:23
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name E. Kalani Flores	2. Contact Person David Kauila Kopper	
3. Address	4. City Kamuela	5. State and ZIP HI
6. Email	7. Phone	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name David Kauila Kopper, Ashley Obrey, Leinaala Ley	10. Firm Name Native Hawaiian Legal Corporation	
11. Address 1164 Bishop St. #1205	12. City Honolulu	13. State and ZIP HI 96813
14. Email dakoppe@nhlchi.org	15. Phone 808-521-2302	16. Fax 808-537-4268

C. SUBJECT MATTER

17. Board Action Being Contested

November 8, 2013 BLNR Agenda Item No. D-5: Mutual Cancellation of General Lease No. S-4191 to the University of Hawaii (UH) for the Mauna Kea Science Reserve and Issuance of New Direct Lease to UH for Mauna Kea Science Reserve Purposes; Mutual Cancellation of General Lease No. S-5529 to UH for the Hale Pohaku Mid-Level Facilities and Issuance of New Direct Lease to UH for Hale Pohaku Mid-Level Facilities Purposes; Extension, Amendment and Restatement of Grant of Term Easement S-4697 to UH to Extend the Easement Term by Approximately 45 Years and Update the Easement Instrument with Current Provisions Approved by the Department of the Attorney General, Kaohe, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 por., 09 & 12 (HDLO)

18. Board Action Date
11/8/2013

19. Item No.
D-5

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

Petitioner Flores' interests stem from his: (a) traditional and customary practices; (b) standing as a beneficiary of the ceded lands trust; and (c) environmental interests.

Petitioner is a Native Hawaiian who holds Mauna Kea sacred pursuant to traditional and customary beliefs. Mauna Kea, traditionally known as Mauna a Wākea, has long been regarded as the most sacred place on the island by Native Hawaiians of the past and still remembered and cherished by Hawaiians today. Mauna Kea is considered a temple and a site of pilgrimage as confirmed by the several hundred shrines found on the mountain. It has been and continues to be used as a place to conduct traditional, customary, and religious practices.

Petitioner has traditional and customary practices at the areas on Mauna Kea covered under the proposed leases. Petitioner has previously been qualified as an expert to his cultural practices related to Mauna Kea and in the area of Hawaiian cultural traditions through his knowledge, skills, experience, training, and education.

The proposed lease areas are ceded lands under Section 5(b) of the Hawai'i Admissions Act; thus, petitioner has an interest in the proposed lease areas as a beneficiary of the ceded lands trust. Petitioner, as a Native Hawaiian, is personally effected by the disposition and use of ceded lands. Petitioner has standing to enforce the State of Hawai'i's duty to manage ceded lands consistent with the highest fiduciary duties.

21. Any Disagreement Petitioner May Have with an Application before the Board

Among other objections, Petitioner objects to the proposed leases as they will adversely affect his traditional and customary practices and his cultural and environmental interests. DLNR has failed to independently investigate and protect Native Hawaiian practices in the lease area pursuant to *Ka Pa`akai O Ka `Āina v. Land Use Comm'n*, 94 Hawai'i 31, 47, 7 P.3d 1068, 1084 (2000).

Applicant University of Hawai'i and DLNR also seeks to avoid the preparation of an Environmental Assessment as required by Hawai'i Revised Statutes Chapter 343 even though the leases do not meet any of the enumerated exemptions in Hawai'i Administrative Rules Title 11 Chapter 200.

Additionally, the proposed leases contemplate management of lands in the ceded land trust in such a way that would violate the State of Hawai'i's fiduciary duties to hold these lands as a public trust for native Hawaiians and the general public pursuant to Article XII, Section 4 of the Constitution of the State of Hawai'i. The proposed leases would allow applicant to use and occupy sensitive and sacred

lands without charging any lease rent. Further, nothing in the proposed leases would authorize or require applicant to immediately negotiate and demand new sub-lease terms at fair market value with the current sub-leases, whose leases are currently at \$1 a year. The leases also do not require applicants to account to DLNR and OHA for the fair-market-value of any in-kind services or compensation received under the sub-leases, which is contrary to the Admissions Act.

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

The BLNR should (a) grant this request for a contested case hearing and allow a HRS chapter 91 contested case hearing to proceed; and (b) deny the application for the above reference agenda item.

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

The proposed leases will adversely affect a sacred and culturally and environmentally sensitive site, constitutionally protected gathering practices, and native Hawaiians' and the general public's right to a share of revenue generated by the University.

The contested case hearing will be the only way to identify crucial facts and reasonable alternatives that the DLNR has failed to identify or analyze in accordance with governing law related to the public trust and constitutional provisions. The hearing will serve the public interest by allowing full consideration of the rights and obligations established by Haw. Const., Art. XII, § 4 and the Hawai'i Supreme Court's *Ka Pa`akai O Ka `Āina v. Land Use Commission* decision, which requires the BLNR to independently identify and consider Native Hawaiian traditional and customary practices and analyze the Applicant's impact on those practices and cultural resources prior to decisionmaking. Enforcing the rights of Native Hawaiians attempting to preserve their traditional and customary practice is a public trust purpose in and of itself and is necessarily in the public interest. Petitioner's participation in a contested case hearing will enable the BLNR to engage in the analysis required under the Hawai'i Constitution, *Ka Pa`akai*, and other governing constitutional, statutory and regulatory criteria, all of which would serve the public interest. It will also allow DLNR to determine whether Applicants have been and will be enforcing terms of current subleases issued for the lease areas, such as whether the subleases are coterminous with the DLNR issued leases. As a respected practitioner in the Hawaiian community, Petitioner represents a quintessential traditional and customary practitioner whose rights this Board must acknowledge by allowing his participation in the requested contested case hearing. Further, Petitioner is a beneficiary of the ceded land trusts and thus shares the public's interest in the proper management of ceded lands.

24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

Petitioner has a clear interest in the property distinguishable from that of the general public and has a substantial interest in this matter.

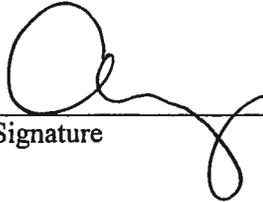
Petitioner Flores is a member of the Flores-Case `Ohana that has genealogical ties to Mo`oinanea, guardian of Lake Waiau, who resides on the summit of Mauna a Wākea. He continues to exercise traditional and customary Native Hawaiian cultural, spiritual, and religious practices connected to Mauna a Wākea, including traditional and customary pilgrimages to the summit and to Lake Waiau, as well as ceremonies at ahu situated at Pu`u Huluhulu, Hale Pōhaku, and on the summit.

The BLNR previously held a contested case hearing regarding the construction of the Thirty-Meter-Telescope, in which Petitioner was granted standing (CDUA HA-3568).

Petitioner also must address DLNR Staff's admission at the November 8, 2013 Board Meeting regarding this matter that attorneys for the applicant assisted with the staff submittal. Because of this admission, it is apparent that the recommendations set forth by the staff submittal are improperly tainted. The BLNR must be advised in a neutral manner and make all determinations independently. The Board should not rely on staff submittals improperly influenced by an applicant.

- Check this box if Petitioner is submitting supporting documents with this form.
 Check this box if Petitioner will submit additional supporting documents after filing this form.

Ashley K. Obrey
Petitioner or Representative (Print Name)


Signature

11/18/13
Date



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

1. File (deliver, mail or fax) this form within ten (10) days of the Board action date to:

Department of Land and Natural Resources
Administrative Proceedings Office
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813
Phone: (808) 587-1496, Fax: (808) 587-0390

DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

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LAND DIVISION

2. DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://hawaii.gov/dlnr/rules/Ch13-1-Official-Rules.pdf>). Please review these rules before filing a petition.
3. If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
4. Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Paul Neves	2. Contact Person David Kauila Kopper	
3. Address	4. City Hilo	5. State and ZIP HI 96720
6. Email	7. Phone	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name David Kauila Kopper, Ashley Obrey, Leinaala Ley	10. Firm Name Native Hawaiian Legal Corporation	
11. Address 1164 Bishop St. #1205	12. City Honolulu	13. State and ZIP HI 96813
14. Email dakoppe@nhlchi.org	15. Phone 808-521-2302	16. Fax 808-537-4268

C. SUBJECT MATTER

17. Board Action Being Contested

November 8, 2013 BLNR Agenda Item No. D-5: Mutual Cancellation of General Lease No. S-4191 to the University of Hawaii (UH) for the Mauna Kea Science Reserve and Issuance of New Direct Lease to UH for Mauna Kea Science Reserve Purposes; Mutual Cancellation of General Lease No. S-5529 to UH for the Hale Pohaku Mid-Level Facilities and Issuance of New Direct Lease to UH for Hale Pohaku Mid-Level Facilities Purposes; Extension, Amendment and Restatement of Grant of Term Easement S-4697 to UH to Extend the Easement Term by Approximately 45 Years and Update the Easement Instrument with Current Provisions Approved by the Department of the Attorney General, Kahohe, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 por., 09 & 12 (HDLO)

18. Board Action Date

11/8/2013

19. Item No.

D-5

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

Petitioner Neves' interests stem from his: (a) traditional and customary practices; (b) standing as a beneficiary of the ceded lands trust; and (c) environmental interests.

Petitioner is a native Hawaiian who holds Mauna Kea sacred pursuant to his traditional and customary beliefs. Mauna Kea, traditionally known as Mauna a Wākea, has long been regarded as the most sacred place on the island by Native Hawaiians of the past and still remembered and cherished by Hawaiians today. Mauna Kea is considered a temple and a site of pilgrimage as confirmed by the several hundred shrines found on the mountain. It has been and continues to be used as a place to conduct traditional, customary, and religious practices.

Petitioner has traditional and customary practices at the areas on Mauna Kea covered under the proposed leases. Petitioner is a respected Kumu Hula and holds Mauna Kea sacred and an essential part of his traditional and customary practices and beliefs. To him, Mauna Kea is the piko -- the center of our continued existence -- who protects us from harm, natural and unnatural, preserves our resources of water for today and tomorrow, and perpetuates the continued evolution of the Kanaka Hawai'i culture.

The proposed lease areas are ceded lands under Section 5(b) of the Hawai'i Admissions Act; thus, the petitioner has an interest in the proposed lease areas as a beneficiary of the ceded lands trust. Petitioner, as a native Hawaiian, is personally affected by the disposition and use of ceded lands. Petitioner has standing to enforce the State of Hawai'i's duty to manage ceded lands consistent with the highest fiduciary duties.

21. Any Disagreement Petitioner May Have with an Application before the Board

Among other objections, Petitioner objects to the proposed leases as they will adversely affect his traditional and customary practices and his cultural and environmental interests. DLNR has failed to independently investigate and protect Native Hawaiian practices in the lease area pursuant to *Ka Pa`akai O Ka `Āina v. Land Use Comm'n*, 94 Hawai'i 31, 47, 7 P.3d 1068, 1084 (2000).

Applicant University of Hawai'i and DLNR also seek to avoid the preparation of an Environmental Assessment as required by Hawai'i Revised Statutes Chapter 343 even though the leases do not meet any of the enumerated exemptions in Hawai'i Administrative Rules Title 11 Chapter 200.

Additionally, the proposed leases contemplate management of lands in the ceded land trust in such a way that would violate the State of Hawai'i's fiduciary duties to hold these lands as a public trust for

native Hawaiians and the general public pursuant to Article XII, Section 4 of the Constitution of the State of Hawai'i. The proposed leases would allow applicants to use and occupy sensitive and sacred lands without charging any lease rent. Further, nothing in the proposed leases would authorize or require applicants to immediately negotiate and demand new sub-lease terms at fair market value with the current sub-leases, whose leases are currently at \$1 a year. The leases also do not require applicants to account to DLNR and OHA for the fair-market-value of any in-kind services or compensation received under the sub-leases, which is contrary to the Admissions Act.

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

The BLNR should (a) grant this request for a contested case hearing and allow a HRS chapter 91 contested case hearing to proceed; and (b) deny the application for the above reference agenda item.

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

The proposed leases will adversely affect a sacred and culturally and environmentally sensitive site, constitutionally protected gathering practices, and native Hawaiians' and the general public's right to a share of revenue generated by the applicant.

The contested case hearing will be the only way to identify crucial facts and reasonable alternatives that the DLNR has failed to identify or analyze in accordance with governing law related to the public trust and constitutional provisions. The hearing will serve the public interest by allowing full consideration of the rights and obligations established by Haw. Const., Art. XII, § 4 and the Hawai'i Supreme Court's *Ka Pa`akai O Ka `Aina v. Land Use Commission* decision, which requires the BLNR to independently identify and consider Native Hawaiian traditional and customary practices and analyze the applicant's impact on those practices and cultural resources prior to decisionmaking. Enforcing the rights of Native Hawaiians attempting to preserve their traditional and customary practices is a public trust purpose in and of itself and is necessarily in the public interest. Petitioner's participation in a contested case hearing will enable the BLNR to engage in the analysis required under the Hawai'i Constitution, *Ka Pa`akai*, and other governing constitutional, statutory and regulatory criteria, all of which would serve the public interest. As a respected practitioner in the Hawaiian community, Mr. Neves represents a quintessential traditional and customary practitioner whose rights this Board must acknowledge by allowing his participation in the requested contested case hearing. Further, petitioner is a beneficiary of the ceded land trust and thus shares the public's interest in the proper management of ceded lands.

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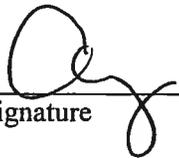
As a practitioner, Kumu Hula and Kanaka Hawai'i, Petitioner looks to Mauna Kea as the connection to all of creation and the piko of his existence. He looks to her guidance everyday from his home in Keaukaha. Petitioner celebrates in communal gatherings of spiritual reflection and celebration four times a year -- the Winter and Summer Solstice, and Spring and Fall Equinox. During the rest of the year, he ventures up to Mauna Kea to honor Akua, pray for guidance, strength, or in remembrance. During his visits to the various ahu (shrines) on Mauna Kea, Petitioner offers appropriate ho`okupu, chants, and prayers. Mauna Kea has compelled Petitioner, as a Kumu Hula, to haku mele, compose song and chant. He has also exercised traditional and customary practices related to the use of Lake Waiau and other water sources and cultural sites in and around the summit area for the gathering of ice, snow, water, raw materials for adz making, depositing of the "piko" or umbilical cord in Lake Waiau, performing traditional astronomy, cosmology, navigation, continuing burial practices, and conducting temple worship, in, among, and around the Mauna Kea summit, Ice Age Natural Area

Reserve, and Science Reserve. As part of Petitioner's traditional and customary practices, it is essential to revere and honor this sacred resource.

The BLNR previously held a contested case hearing regarding the construction of the Thirty-Meter-Telescope, in which Petitioner was granted standing.

Petitioner also must address DLNR Staff's admission at the November 8, 2013 Board Meeting that attorneys for the applicant assisted with the staff submittal for this agenda item. Because of this admission, it is apparent that the recommendations set forth by the staff submittal are improperly tainted. The BLNR must be advised in a neutral manner and make all determinations independently. The Board should not rely on staff submittals improperly influenced by an applicant.

- Check this box if Petitioner is submitting supporting documents with this form.
- Check this box if Petitioner will submit additional supporting documents after filing this form.

Ashley K. Obrey  11/18/13
Petitioner or Representative (Print Name) Signature Date

Hanalei Fergerstrom

Kurtistown, Hawaii 96760

Department of Land and Natural Resources
1150 Punchbowl St
Honolulu, Hawaii 96813
Attn. William Aila, Chair

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December 17, 2013

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NATURAL RESOURCES
STATE OF HAWAII

Aloha Bill,

As a follow up on the board meeting held on December 13, 2013, I wanted to insure that I will be able to contest the case express as agenda item D-15. While I understand that the UH had decided to do a full EIS, the fact remains that this agenda item was not concluded or withdrawn.

While I welcome the EIS, there are matters that do not have to do with the environment that I would like to challenge, like the exclusive economic zone provided to the University without consideration or benefit to the rest of the State as a matter of the beneficiaries of the Ceded Lands Trust.

I am also very concerned with the Palila Critical Habitat that is in rapid decline. Like the whole area from Ahu Moea to Hale Pohaku. That critical habitat also includes areas controlled by the ARMY at Pohakuloa. There are few stands of mature mamane trees left. There has been released large sums of monies for the protection of critical habitat. That would have to include to protection and promotion of the mamane forest, especially in the known areas that the Palla utilize. That is the western side of the base of Mauna Kea.

Anyway, may you please give me insurance that I have reserved my right to contest this case.

Thank you very much...Have a wonderful Christmas.

Aloha Mai,


Hanalei Fergerstrom

EXHIBIT 7