

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
Honolulu, Hawaii**

March 09, 2011

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

**REGARDING: Temporary Deferral of Reporting Requirement  
Conservation District Use Permit MA-3542  
Advanced Technology Solar Telescope**

**APPLICANTS:** University of Hawai`i, Institute for Astronomy

**AGENT:** Mike Maberry, Assistant Director, University of Hawai`i, 34 `Ohi`a Kū,  
Room 216, Makawao, HI 96768

**LANDOWNER:** State of Hawai`i, set aside by Executive Order 1987 to the University of  
Hawai`i

**LOCATION:** Haleakalā High Altitude Observatories Site (HO) at Pu`u Kolekole,  
ahupua`a of Papa`anui, moku of Honua`ula, Makawao District, Maui

**TMK:** (2) 2-2-007:008 and (2) 2-2-007:007 (part; staging only)

**ARE OF PARCEL:** 18.166 acres (HO)

**AREA OF USE:** 0.86 acres

**SUBZONE:** General

**BACKGROUND**

On December 1, 2010, the Board of Land and Natural Resources approved this Conservation District Use Permit (CDUP) MA-3542 for the Advanced Technology Solar Telescope at the Haleakalā High Altitude Observatory Site.

The Office of Conservation and Coastal Lands (OCCL) received written and oral requests for a Contested Case Hearing on the permit from Kilakila `O Haleakalā, represented by the Native Hawaiian Legal Corporation.

OCCL notified the petitioner, permittee, and Board Members that, pursuant to §13-1-39, Hawai'i Administrative Rules, *No party or person petitioning to be a party to a proceeding before the Board nor their employees, representatives or agents shall make an unauthorized ex parte communication either orally or written concerning the contested case to any member of the Board who will be a participant in the decision-making process.*

On February 11, 2011 the Board authorized the appointment of a Hearing Officer for Contested Case MA-11-04 to conduct hearings relevant to the subject petition. The Evidentiary Hearings have concluded, and OCCL anticipates presenting the relevant case materials to the Board for their consideration in the Spring of 2012.

### CURRENT SITUATION

Condition 7 of CDUP MA-3542 reads:

The applicant will follow the stipulations agreed upon in the Programmatic Agreement signed between the National Science Foundation, the National Park Service, the University of Hawaii, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation. These include but are not limited to the establishment of a Native Hawaiian Working Group, the retention of a Cultural Specialist; reserving up to 2% of the total ATST usage time for Native Hawaiian scientists, when there are Native Hawaiians among the pool of qualified scientists; and providing support to an educational initiative addressing the intersection between Native Hawaiian culture and science. The applicant commits to continued mitigation of impacts on cultural resources on the Region of Impact (ROI). **The applicant will provide a written annual report to the Board on the status of the implementation of the Programmatic Agreement, including: listing the proposed mitigations to impacts on cultural resources developed by the Native Hawaiian Working Group (NHWG); the response to those proposed mitigations by the signatory parties to the Programmatic Agreement; and, the implementation of any such mitigation measures by the University.**

OCCL has scheduled similar annual reports as a “non-action item” on the Board’s agenda, and invited the permittee to give a brief presentation to the Board.

OCCL has received the written report from the permittee. However, given that Contested Case MA-11-04 on the permit is still in progress, we are concerned with violating the prohibition on ex-parte communication between parties to the Case and Board members should we place the report on the agenda of a Board Meeting before the Board has made a decision on the Case.

**RECOMMENDATION**


OCCL is recommending that the Board of Land and Natural Resources defer the reporting requirement contained in Condition 7 of CDUP MA-3542 until after the Board has rendered a decision on Contested Case MA-11-04.

Respectfully submitted,



Michael Cain, Staff Planner  
Office of Conservation and Coastal Lands

**Approved for submittal:**



 William J. Aila, Chairperson  
Board of Land and Natural Resources