

MAUNA KEA ANAINA HOU;
CLARENCE KUKAUAKAHI CHING;
FLORES-CASE ‘OHANA; DEBORAH J.
WARD; PAUL K. NEVES; and KAHEA:
THE HAWAIIAN ENVIRONMENTAL
ALLIANCE, a domestic non-profit
corporation,

Petitioners-Appellants-Appellants,

vs.

BOARD OF LAND AND NATURAL
RESOURCES, STATE OF HAWAII;
DEPARTMENT OF LAND AND
NATURAL RESOURCES, STATE OF
HAWAII; WILLIAM J. AILA, Jr., in his
official capacity as Chair of the Board of
Land and Natural Resources and Director
of the Department of Land and Natural
Resources; and the UNIVERSITY OF
HAWAII AT HILO,

Respondents-Appellees-Appellees.

) CIVIL NO. 13-1-0349
) (Agency Appeal)
)
) APPEAL FROM:
)
) 1) FINAL JUDGMENT FILED ON
) MAY 5, 2014
)
) 2) DECISION AND ORDER
) AFFIRMING BOARD OF LAND AND
) NATURAL RESOURCES, STATE OF
) HAWAII’S FINDINGS OF FACT,
) CONCLUSIONS OF LAW AND
) DECISION AND ORDER GRANTING
) CONSERVATION DISTRICT USE
) PERMIT FOR THE THIRTY METER
) TELESCOPE AT THE MAUNA KEA
) SCIENCE RESERVE DATED APRIL
) 12, 2013, FILED ON MAY 5, 2014
)
) THIRD CIRCUIT COURT
)
) HONORABLE GREG K. NAKAMURA
) Judge
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APPLICATION FOR TRANSFER TO THE SUPREME COURT
OF THE STATE OF HAWAII

DECLARATION OF RICHARD NAIWIEHA WURDEMAN

APPENDICES "A" – "B"

and

CERTIFICATE OF SERVICE

RICHARD NAIWIEHA WURDEMAN 6015-0
Attorney at Law, A Law Corporation
333 Queen Street, Suite 604
Honolulu, Hawaii 96813
Telephone: (808) 536-0633
Facsimile: (808) 536-0634
e-mail: RNWurdeman@RNWLaw.com

Attorney for Petitioners-Appellants-Appellants
MAUNA KEA ANAINA HOU and KEALOHA
PISCIOTTA; CLARENCE KUKAUAKAHI
CHING; FLORES-CASE OHANA; DEBORAH J.
WARD; PAUL K. NEVES; and KAHEA: THE
HAWAIIAN ENVIRONMENTAL ALLIANCE, a
domestic non-profit corporation

IN THE SUPREME COURT OF THE STATE OF HAWAII

MAUNA KEA ANAINA HOU;	) CIVIL NO. 13-1-0349
CLARENCE KUKAUAKAHI CHING;	) (Agency Appeal)
FLORES-CASE 'OHANA; DEBORAH J.	)
WARD; PAUL K. NEVES; and KAHEA:	) APPEAL FROM:
THE HAWAIIAN ENVIRONMENTAL	)
ALLIANCE, a domestic non-profit	) 1) FINAL JUDGMENT FILED ON
corporation,	) MAY 5, 2014
	)
Petitioners-Appellants-Appellants,	) 2) DECISION AND ORDER
	) AFFIRMING BOARD OF LAND AND
vs.	) NATURAL RESOURCES, STATE OF
	) HAWAII'S FINDINGS OF FACT,
BOARD OF LAND AND NATURAL	) CONCLUSIONS OF LAW AND
RESOURCES, STATE OF HAWAII;	) DECISION AND ORDER GRANTING
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NATURAL RESOURCES, STATE OF	) PERMIT FOR THE THIRTY METER
HAWAII; WILLIAM J. AILA, Jr., in his	) TELESCOPE AT THE MAUNA KEA
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Land and Natural Resources and Director	) 12, 2013, FILED ON MAY 5, 2014
of the Department of Land and Natural	)
Resources; and the UNIVERSITY OF	) THIRD CIRCUIT COURT
HAWAII AT HILO,	)
	) HONORABLE GREG K. NAKAMURA
Respondents-Appellees-Appellees.	) Judge
	)
	)

APPLICATION FOR TRANSFER TO THE SUPREME COURT
OF THE STATE OF HAWAII

I. REQUEST FOR TRANSFER

Petitioners-Appellants-Appellants MAUNA KEA ANAINA HOU and KEALOHA PISCIOTTA, CLARENCE KUKAUAKAHI CHING, FLORES-CASE OHANA, DEBORAH J. WARD, PAUL K. NEVES, and KAHEA: THE HAWAIIAN ENVIRONMENTAL ALLIANCE (also referred to herein collectively as "Mauna Kea Anaina Hou" or "Petitioners"), Appellants-Appellants in the Intermediate Court of Appeals (ICA) in CAAP14-0000873, and pursuant to Hawaii Revised Statutes (HRS) § 602-58 and Hawaii Rules of Appellate Procedure (HRAP) Rule 40.2, do hereby respectfully request that this appeal be transferred from the ICA to the

Supreme Court of the State of Hawai'i. This application is timely as this application is being filed no earlier than 10 days after the filing of the record on appeal and no later than 20 days after the last brief is filed or could have been filed, as required under HRAP Rule 40.2(a)(2). The reply briefs in the instant case were filed on April 20, 2015.

II. STATEMENT OF PRIOR PROCEEDINGS

Respondent-Appellee-Appellee University of Hawaii at Hilo (also referred to hereinafter as "U.H. Hilo") submitted its Conservation District Use Application (HA-3568) for the Thirty Meter Telescope ("TMT") Project in the Mauna Kea Conservation District, TMK: (3) 4-4-015:009 ("CDUA HA-3568"), to the Department of Land and Natural Resources ("DLNR"), on September 2, 2010. Record on Appeal Document (ROA) 50, Volume 10, at 2, 10; ROA 272, V.122 at 59. Earlier, on May 19, 2010, then-Governor Linda Lingle accepted UHH's Final Environmental Impact Statement for the TMT Project (TMT FEIS). ROA 48, V.9 at 126.

On February 25, 2011, the Board of Land and Natural Resources (BLNR) at its regular meeting in Honolulu voted to approve the CDUA HA-3568 for the TMT in the Mauna Kea Conservation District, Mauna Kea Science Reserve, Ka'ohe Mauka, Hamakua, Hawai'i, TMK: (3) 4-4-015:009. ROA 276, V. 124, at 3; ROA 272, V.122 at 23, 62.

Immediately following the approval of CDUA HA-3568 at the February 25, 2011 BLNR meeting, the matter of holding a contested case hearing was then considered by the BLNR as item K-2 on the agenda. ROA 272, V.122 at 59-62. Oral requests for a contested case hearing were made during this portion of the hearing on February 25, 2011 by Pisciotta for MKAH, Townsend for KAHEA, and Ching. ROA 272, V.122 at 59-62. BLNR construed the written request by Kalani Flores as an oral request for a contested case hearing as well. ROA 272, V.122 at 60; ROA 60, V.15 at 93. Other written requests were made as well. *Id.* BLNR ruled on its own motion to hold a contested case hearing and that follow-up would have to be made by written petition. ROA 272, V.122 at 62.

Following various pre-hearing orders, a site visit, submissions of opening briefs and exhibits, and other matters, the contested case hearing commenced on August 15, 2011. Testimony was taken and evidence submitted during the following seven hearing days: August 15, 16, 17, 18, and 25, 2011, and September 26 and 30, 2011. See ROA 100, V.35 at 17.

After the parties filed their respective Proposed Findings of Fact, Conclusions of Law, Decision and Order, at the conclusion of the contested case hearings (see ROA 80, V. 25 at 2 -

ROA 82, V.26 at 90), and following comments and responses by the parties to the submittals of their opponent (see ROA 84, V.27, ROA 86, V.28), the Hearings Officer issued his Proposed Findings of Fact, Conclusions of Law and Decision and Order, on November 30, 2012, over a year after the conclusion of the final hearing of the contested case hearings. ROA 88, V.29 at 3-127. Oral Arguments were held before the BLNR on February 12, 2013. See ROA 90, V.30 at 8, ROA 92, V.31 at 2, ROA 32, V.1 at 60, Transcript of Proceedings of February 12, 2013 (“2/12/13 TR”).

The BLNR issued its Findings of Fact, Conclusions of Law, and Decision and Order on April 12, 2013. ROA 100, V.35 at 2-133.

On May 13, 2013, Appellants-Appellants Mauna Kea Anaina Hou and Kealoha Pisciotto, Clarence Kukauakahi Ching, Flores-Case Ohana, Deborah J. Ward, Paul K. Neves, and Kahea: The Hawaiian Environmental Alliance, a domestic non-profit corporation, (hereinafter also referred to collectively as “Petitioners” or “Appellants”) timely filed its Notice of Appeal to Circuit Court. Record on Appeal (“ROA”): V. at 1. Following the parties’ submissions of briefs, oral arguments were held on December 13, 2013 and further arguments were held on February 20, 2014. See Transcript of Proceedings of December 13, 2013 (“12/13/2013 TR”) and February 20, 2014 (“2/20/14 TR”), respectively.

The circuit court entered its Decision and Order Affirming Board of Land and Natural Resources, State of Hawaii’s Findings of Fact, Conclusions of Law and Decision an Order Granting Conservation District Use Permit for the Thirty Meter Telescope at the Mauna Kea Science Reserve Dated April 13, 2013, on May 5, 2014. (ROA 40, V.5 at 32-44, attached hereto as Appendix “B”). Final Judgment was filed on May 5, 2014. (ROA 40, V.5 at 30-32, attached hereto as Appendix “C”). Petitioners filed their timely Notice of Appeal on June 3, 2014.

III. SHORT STATEMENT OF RELEVANT FACTS.

Respondent-Appellee-Appellee University of Hawaii at Hilo (also referred to hereinafter as “U.H. Hilo”) submitted its Conservation District Use Application (HA-3568) for the Thirty Meter Telescope (“TMT”) Project in the Mauna Kea Conservation District, TMK: (3) 4-4-015:009 (“CDUA HA-3568”), to the Department of Land and Natural Resources (“DLNR”), on September 2, 2010. Record on Appeal Document (ROA) 50, Volume 10, at 2, 10; ROA 272, V.122 at 59 Earlier, on May 19, 2010, then-Governor Linda Lingle accepted UHH’s Final Environmental Impact Statement for the TMT Project (TMT FEIS). ROA 48, V.9 at 126.

On February 25, 2011, the Board of Land and Natural Resources (BLNR) at its regular meeting in Honolulu voted to approve the CDUA HA-3568 for the TMT in the Mauna Kea Conservation District, Mauna Kea Science Reserve, Ka'ohe Mauka, Hamakua, Hawai'i, TMK: (3) 4-4-015:009. ROA 276, V. 124, at 3; ROA 272, V.122 at 23, 62. The BLNR had voted to approve the staff recommendations of the DLNR Office of Conservation and Coastal Lands (OCCL) in its report, dated February 25, 2011 (see ROA 276, V. 124, at 63-66), with the addition of five amendments and amended condition #7, that included an amendment that if a contested case proceeding was initiated, no construction should occur until a final decision was rendered by BLNR in favor of the applicant or the proceeding was otherwise dismissed. ROA 274, V.123 at 58-59.

Prior to the approval and during the public testimony portion of the February 25, 2011 BLNR meeting, Kealoha Pisciotta of Mauna Kea Anaina Hou (MKAH), Jonathan Osorio, a Board Member of KAHEA: The Hawaiian-Environmental Alliance (KAHEA), and Marti Townsend of KAHEA all specifically objected to the approval of the CDUP prior to conducting a contested case hearing. ROA 272, V.122 at 38, 39, 40, 42-44. Clarence Kūkauakahi Ching (Ching) also stated various objections to the CDUP and the TMT Project. ROA 272, V.122 at 2, 42.

Immediately following the approval of CDUA HA-3568 at the February 25, 2011 BLNR meeting, the matter of holding a contested case hearing was then considered by the BLNR as item K-2 on the agenda. ROA 272, V.122 at 59-62. Oral requests for a contested case hearing were made during this portion of the hearing on February 25, 2011 by Pisciotta for MKAH, Townsend for KAHEA, and Ching. ROA 272, V.122 at 59-62. BLNR construed the written request by Kalani Flores as an oral request for a contested case hearing as well. ROA 272, V.122 at 60; ROA 60, V.15 at 93. Other written requests were made as well. Id. The BLNR ruled on its own motion to hold a contested case hearing and that follow-up would have to be made by written petition. ROA 272, V.122 at 62. On March 7, 2011, Kealoha Pisciotta filed a petition for a contested case hearing on behalf of Mauna Kea Anaina Hou, Townsend filed a petition for a contested case hearing on behalf of KAHEA, Ching filed a petition for a contested case hearing, Paul K. Neves filed a petition for a contested case hearing on behalf of himself and on behalf of ROOK 1 (that was subsequently withdrawn as to ROOK 1), and Deborah J. Ward filed a petition for a contested case hearing. ROA 274, V.123 at 14, 19, 29, 40, 49. Kalani

Flores had filed a petition for a contested case hearing on behalf of himself, his wife B. Pualani Case, and his 'ohana (the Flores-Case 'Ohana) on February 23, 2011. ROA 274, V.123 at 4.

In the petition for contested case hearing filed by Pisciotta on behalf of MKAH asserted, *inter alia*, MKAH is an unincorporated association of individuals who reside on the Island of Hawai'i and who have advocated for the protection of Mauna Kea's cultural resources since the late 1980's; members of the association have genealogical ties to the Mauna Kea Science Reserve ("MKSR") and have engaged in traditional cultural and religious practices there; and the association has an interest in the management of cultural and natural resources within the MKSR that is separate from that of the general public. See ROA 274, V.123 at 19-28; ROA 100, V.35 at 9-10.

In Ching's petition for a contested case hearing, he asserted, *inter alia*, that he is a native Hawaiian cultural practitioner and environmentalist who carries out certain cultural practices within the MKSR and elsewhere, and that as an individual, he has an interest in the management of cultural and natural resources within the MKSR that is separate from that of the general public. See ROA 274, V.123 at 49; ROA 100, V.35 at 9.

In Neves' petition for a contested case hearing, he asserted, *inter alia*, he is a native Hawaiian cultural practitioner who carries out certain practices within the MKSR; that he has familial and genealogical ties to Mauna Kea; and that he has an interest that is separate from that of the general public. See ROA 274, V.123 at 29; ROA 100, V.35 at 9-10.

In Ward's petition for a contested case hearing, she asserted, *inter alia*, she is an environmental scientist who has advocated for the environmental protection of Mauna Kea for many years; that since 2000, she has been an active member of the Mauna Kea Management Board's Environmental Committee of the University's Office of Mauna Kea Management; that she is a long-time recreational user of MKSR and has participated in many hikes and service projects there as a naturalist and conservationist; and that she has an interest in the management of cultural and natural resources within the MKSR that is separate from that of the general public. See ROA 274, V.123 at 40; ROA 100, V.35 at 10.

In the contested case petition filed by E. Kalani Flores on behalf of himself and his 'ohana, Flores asserted, *inter alia*, they were native Hawaiian cultural practitioners who carry out certain practices on Mauna Kea, including its summit; that they have genealogical ties to ancestral entities on Mauna Kea; and that they have an interest in the management of cultural and

natural resources within the MKSR that is separate from that of the general public. ROA 100, V.35 at 10; ROA 274, V.123 at 4-6

The contested case petition filed by Townsend for KAHEA asserted, *inter alia*, that KAHEA is an organization that has advocated for the protection of Mauna Kea's cultural and natural resources since 2001; that the Board and constituents include native Hawaiian cultural practitioners, conservationists, scientists, educators, recreational users, subsistence hunters, and outdoor enthusiasts who use areas within the MKSR; and that KAHEA has an interest in the management of cultural and natural resources within the MKSR that is separate from that of the general public. See ROA 274, V.123 at 14-18; ROA 100, V.35 at 9.

Later, following the selection of the hearing officer by the BLNR, over the objections of the Petitioners, a standing hearing was scheduled on May 13, 2011. See ROA 100, V.35 at 11. Following the standing hearing, Ching; KAHEA (represented by Townsend), MKAH (represented by Pisciotta), Ward, Neves, and the Flores-Case 'Ohana, were found to have standing and were admitted as parties. See Minute Order No. 6: Order Regarding Standing, ROA 64, V.17 at 19; ROA 100, V.35 at 11-12.

Immediately following the approval of CDUA HA-3568 at the February 25, 2011 BLNR meeting, the matter of holding a contested case hearing was then considered by the BLNR as item K-2 on the agenda. ROA 272, V.122 at 59-62. Oral requests for a contested case hearing were made during this portion of the hearing on February 25, 2011 by Pisciotta for MKAH, Townsend for KAHEA, and Ching. ROA 272, V.122 at 59-62. BLNR construed the written request by Kalani Flores as an oral request for a contested case hearing as well. ROA 272, V.122 at 60; ROA 60, V.15 at 93. Other written requests were made as well. Id. BLNR ruled on its own motion to hold a contested case hearing and that follow-up would have to be made by written petition. ROA 272, V.122 at 62.

Following various pre-hearing orders, a site visit, submissions of opening briefs and exhibits, and other matters, the contested case hearing commenced on August 15, 2011. Testimony was taken and evidence submitted during the following seven hearing days: August 15, 16, 17, 18, and 25, 2011, and September 26 and 30, 2011. See ROA 100, V.35 at 17.

After the parties filed their respective Proposed Findings of Fact, Conclusions of Law, Decision and Order, at the conclusion of the contested case hearings (see ROA 80, V. 25 at 2 - ROA 82, V.26 at 90), and following comments and responses by the parties to the submittals of

their opponent (see ROA 84, V.27, ROA 86, V.28), the Hearings Officer issued his Proposed Findings of Fact, Conclusions of Law and Decision and Order, on November 30, 2012, over a year after the conclusion of the final hearing of the contested case hearings. ROA 88, V.29 at 3-127. Exceptions and other pleadings were filed by the parties and Oral Arguments were held before the BLNR on February 12, 2013 and proposed findings of fact and conclusions of law were also challenged by the Petitioners. See ROA 90, V.30 at 8, ROA 92, V.31 at 2, ROA 32, V.1 at 60, Transcript of Proceedings of February 12, 2013 (“2/12/13 TR”). Petitioners-Appellants challenged each of the pertinent findings of fact and conclusions of law in their responses to UHH’s proposed FOF’s/COL’s/Order, on December 5, 2011 (ROA 86, V.28 starting at 2) and in their exceptions to the Hearing Officer’s FOF’s/COL’s/Order (ROA 92, V.31 starting at 2). At the conclusion of oral arguments, the Chair closed the hearing without a vote having been taken. See ROA: Vol. 6, Doc. 127, 2/12/13 TR at 133-134.

The BLNR issued its Findings of Fact, Conclusions of Law, and Decision and Order on April 12, 2013. ROA 100, V.35 at 2-133. The 127 page Finding of Fact, Conclusions of Law and Decision and Order, filed on April 12, 2013, included 474 Findings of Facts, totaling approximately 80 pages of text, and 257 Conclusions of Law, totaling another approximately 40 pages. Id. A copy of the BLNR’s Findings of Fact, Conclusions of Law, and Decision and Order was also filed, on January 14, 2015, in the instant secondary appeal, along with Appellants-Appellants’ Opening Brief on Appeal as Appendix “C.”

On May 13, 2013, Appellants-Appellants Mauna Kea Anaina Hou and Kealoha Pisciotta, Clarence Kukauakahi Ching, Flores-Case Ohana, Deborah J. Ward, Paul K. Neves, and Kahea: The Hawaiian Environmental Alliance, a domestic non-profit corporation, (hereinafter also referred to collectively as “Appellants”) timely filed its Notice of Appeal to Circuit Court. Record on Appeal (“ROA”): V. at 1. On September 26, 2013, Appellants filed their Opening Brief. ROA 34, V.2 at 29-126. A copy of the Opening Brief was also filed, on January 14, 2015, along with the Appellants-Appellants’ Opening Brief on Appeal, filed on January 14, 2014, as Appendix “D.” The Appellants raised the following issues: (1) Whether the Board of Land and Natural Resources’ approval of the Conservation District Use Application prior to holding a contested case hearing violated due process and its and its duties under the State Constitution, H.R.S. Chapters 183C, 205, 205A, and the Hawaii Administrative Rules involving procedure as well as management and use of conservation district lands?; (2) Whether the

approval of the Conservation District Use Permit for the TMT project was inconsistent with the purposes of the conservation district, was contrary to criterion of H.A.R. Sect. 13-5-30(c), and was not supported by the substantial evidence?; (3) Whether the Board of Land and Natural Resources failed to meet its legal and constitutional obligations under Ka Pa'akai o Ka'aina v. Land Use Commission?; and (4) Whether the TMT project can be approved without an approved valid management plan? Id. Appellants filed their Reply Brief on November 19, 2013. ROA 34, V.2 at 222-229. Following the parties' submissions of briefs, oral arguments were held on December 13, 2013 and further arguments were held on February 20, 2014, (see Transcript of Proceedings of December 13, 2013 ("12/13/2013 TR") at 2, 4-9, 20-23, 26 (a copy of these selective pages of the transcripts were filed on January 14, 2015, along with Appellants-Appellants' Opening Brief on Appeal, as Appendix "F") and February 20, 2014 ("2/20/14 TR") at 5-8, 16-18 (a copy of these selective pages of the transcripts were filed on January 14, 2015, along with Appellants-Appellants' Opening Brief on Appeal, as Appendix "G"), respectively), that was also preceded by parties' filing of supplemental briefs, including Appellants who filed their Supplemental Brief RE: Kilakila 'O Haleakala, on January 21, 2014. ROA 36, V.3 at 175-189. A copy of the Appellants Supplemental Brief was also filed, on January 14, 2015, along with Appellants-Appellants' Opening Brief on Appeal, as Appendix "E."

The circuit court entered its Decision and Order Affirming Board of Land and Natural Resources, State of Hawaii's Findings of Fact, Conclusions of Law and Decision an Order Granting Conservation District Use Permit for the Thirty Meter Telescope at the Mauna Kea Science Reserve Dated April 13, 2013, on May 5, 2014. (ROA 40, V.5 at 32-44, a copy was filed along with Appellants-Appellants' Opening Brief on Appeal, on January 14, 2015, as Appendix "B"). Final Judgment was filed on May 5, 2014. (ROA 40, V.5 at 30-32, a copy filed along with Appellants-Appellants' Opening Brief on Appeal, on January 14, 2015, as Appendix "A"). Petitioners filed their timely Notice of Appeal on June 3, 2014.

IV. STATEMENT OF THE POINTS OF ERROR

The Circuit Court reversibly erred when it entered its Decision and Order Affirming Board of Land and Natural Resources, State of Hawaii's Finding of Fact, Conclusions of Law and Decision and Order Granting Conservation District Use Permit for the Thirty Meter Telescope at the Mauna Kea Science Reserve Dated April 12, 2013, filed on May 5, 2014 (May 5, 2014 Decision and Order"). ROA 40, V.5 at 32-44, attached hereto as Appendix "B" (ROA

40, V.5 at 33-45) and Final Judgment, May 5, 2014, attached hereto as Appendix “A” (ROA 40, V.5 at 30-32).¹

1. The circuit court erred and was wrong when it affirmed the Board of Land and Natural Resources’ approval of the Conservation District Use Application prior to it holding a contested case hearing that was in violation of Appellants’ right to due process and was in violation of the BLNR’s duties under the State Constitution, H.R.S. Chapter 183C and 205 and the Hawaii Administrative Rules involving procedure as well as management and use of conservation district lands. The question presented to the circuit court was “[w]hether the Board of Land and Natural Resources’ approval of the Conservation District Use Application prior to holding a contested case hearing violated due process and its duties under the State Constitution, H.R.S. Chapters 183C, 205, 205 and the Hawaii Administrative Rules involving procedure as well as management and use of conservation district lands?” ROA 34, V.2 at 30. The circuit court was clearly erroneous and wrong and had reversibly erred when it found:

A.6. In this case, the preliminary grant of the CDUP did not have such a legal consequence that a contested case hearing was required prior to this action being taken. The BLNR contemplated and did actually afford a contested case hearing prior to the entry of a final decision and order. Moreover, Appellants were not prejudiced during the pendency of the contested case hearing because construction under the CDUP was prohibited.

...

12. For all of the reasons stated herein, the Court finds that *Kilakila* does not apply to the BLNR’s February 25, 2011 vote, and that reversal of the Decision and Order under the standards set forth under HRS § 91-14(g) is not warranted.

¹ As this is a secondary appeal in an agency appeal, the errors of the circuit court are identified rather than specific errors of the BLNR. HRCP Rule 72 does not require the points of error be presented before the circuit court. Appellants challenged each of the pertinent findings of fact and conclusions of law in their responses to UHH’s proposed FOF’s/COL’s/Order, on December 5, 2011 (ROA 86, V.28 starting at 2) and in their exceptions to the Hearing Officer’s FOF’s/COL’s/Order (ROA 92, V.31 starting at 2) and all of those challenged findings and conclusions are also incorporated herein as are the challenges set forth in the briefing and arguments before the circuit court. The BLNR’s Findings of Fact, Conclusions of Law and Decision and Order, filed on April 12, 2013 (ROA 100, V.35 at 2-133), was filed along with the Appellants-Appellants’ Opening Brief on Appeal, on January 14, 2015, as Appendix “C.” Further, and without waiving the above position and in the abundance of caution, specific FOF’s and COL’s that are being challenged also include those set forth by the BLNR and as listed in fn’s 2-5 herein. COL’s #244-257 are being challenged throughout as wrong. Also, Appellants-Appellants’ agency appeal briefs in the circuit court and pertinent portion of the transcripts of the hearings of December 13, 2013 and February 20, 2014, were also filed along with the Appellants-Appellants’ Opening Brief on Appeal, on January 14, 2015, as Appendices D-G.

See May 5, 2014 Decision and Order, Appendix “B,” filed with Opening Brief on Appeal on January 14, 2015. ROA 40, V.5 at 41-42.² Appellants set forth their arguments as to why the BLNR was clearly erroneous and wrong. See ROA 34, V.5 at 35-37; ROA 36, V.3 at 182-187; see also Transcript of Proceedings of December 13, 2013 (“12/13/2013 TR”) at 2, 4-9, 20-23, 26 (a copy of these selective pages of the transcripts were filed on January 14, 2015, along with Appellants-Appellants’ Opening Brief on Appeal, as Appendix “F”) and February 20, 2014 (“2/20/14 TR”) at 5-8, 16-18 (a copy of these selective pages of the transcripts were filed on January 14, 2015, along with Appellants-Appellants’ Opening Brief on Appeal, as Appendix “G”), respectively.

2. The approval of the Conservation District Use Permit for the TMT project was inconsistent with the purposes of the conservation district, was contrary to the criterion of H.A.R. Section 13-5-30(c), and was not supported by the substantial evidence and the circuit court erred and was wrong when it affirmed BLNR’s approval of UHH’s CDUA. The question presented to the circuit court was: “[w]hether the approval of the Conservation District Use Permit for the TMT project was inconsistent with the purposes of the conservation district, was contrary to criterion of H.A.R. Sect. 13-5-30(c), and was not supported by the substantial evidence?” ROA 34, V.2 at 30. The circuit court was clearly erroneous and wrong and had reversibly erred when it found:

B.2. The clear inference from Appellants’ arguments is that Appellants’ premise is that the use of conservation district land for astronomy facilities inherently violates the eight

² The Findings/Conclusions in the May 5, 2014 Decision under A.5., A.7., A.8, A.9, A.10, A.11, and E are also challenged as being clearly erroneous and wrong. ROA 40, V.5 at 40-42, and 45. Without waiving position regarding requirements of secondary appeal as set forth in fn. 1 above, BLNR’s FOF #15 and COL’s #224-232, in Findings of Fact, Conclusions of Law and Decision and Order, filed on April 12, 2013, are also being challenged as clearly erroneous and wrong, respectively. Further, and with respect to FOF #15, it indicates that the BLNR’s vote to approve the Conservation District Use Permit HA-3568 (“CDUP”) was done “while simultaneously directing, on the Board’s own motion, that a contested case be held...” The issue of the contested case hearing was considered by the BLNR after it approved the CDUP. The said finding is clearly erroneous. The same FOF also indicates that the granting of the CDUP was made by “conditioning implementation of the CDUP upon UHH prevailing in any resulting contested case.” What the BLNR ruled was that “if a contested case proceeding is initiated, no construction shall occur until a final decision is rendered by the Board in favor of the applicant or the proceeding is otherwise dismissed.” Thus, further, this portion of FOF 15 is also clearly erroneous.

criteria identified in HAR § 13-5-30(c). However, HRS § 13-5-24(c) makes clear that astronomy facilities under an approved management plan are appropriate in the Resource subzone, which is where the Project is to be located. Accordingly, the Court finds that Appellants' premise that use of conservation district land for astronomy facilities inherently violates Section 13-5-30(c) lacks merit.

...

3. As stated in their Opening Brief (at 11-27), Appellants have asserted that "the Reliable Probative and Substantial Evidence Does Not Support a Decision that" each of the eight criteria in Section 13-5-30(c) is satisfied. In other words, Appellants have challenged the BLNR's findings on the eight criteria as being clearly erroneous. Having reviewed the record on appeal and the BLNR's FOF and COL, the Court finds that the BLNR's findings are amply supported by the reliable, probative, and substantial evidence, and are not clearly erroneous; the Court further finds that Appellants' challenges to the BLNR'S FOF and COL with respect to the eight criteria are unfounded and that reversal of the Decision and Order under the standards set forth under HRS § 91-14(g) is not warranted.

See May 5, 2014 Decision and Order, Appendix "B," filed with the Opening Brief on Appeal on January 14, 2015. ROA 40, V.5 at 43.³ Appellants set forth their arguments as to why the BLNR was clearly erroneous and wrong. See ROA 34, V.5 at 37-57; see also Transcript of Proceedings of December 13, 2013 ("12/13/2013 TR") at 2, 4-9, 20-23, 26 (a copy of these selective pages of the transcripts were filed on January 14, 2015, along with Appellants-Appellants' Opening Brief on Appeal, as Appendix "F").

3. The circuit court erred and was wrong when it found that the CDUP was subject to a sufficient management plan. The question presented to the circuit court was: "[w]hether the TMT project can be approved without an approved valid management plan?" ROA 34, V.2 at 30. The circuit court was clearly erroneous and wrong and had reversibly erred when it found:

D.1. HAR § 13-5-24(c) R-3 (D-1)(2011) allows for a land use of "[a]stronomy facilities under a management plan approved simultaneously with the permit."

2. Under HAR § 13-5-2 (2011), a "management plan" is defined as a "project or site based plan to protect and conserve natural and cultural resources." The Court finds that

³ The Findings/Conclusions in the May 5, 2014 Decision under E is also challenged. ROA 40, V.5 at 45. Without waiving position regarding requirements of secondary appeal as set forth in fn. 1 above, BLNR's FOF's #243-260, 281-421, 422-429, 430-447, 448-453, and 454-474 and any other findings supporting issuance of CDUP under the criterion; and COL's #48-52, 53-62, 89-116, 117-124, 125-142, 143-152, 153-162, and 224-232 and any other conclusions supporting the issuance of the CDUP under the criterion, are also being challenged as clearly erroneous and wrong, respectively.

HAR § 13-5-2 does not require that the “management plan” be a comprehensive plan,” as argued by Appellants.

3. The TMT Management Plan not only relates to the Project, but also incorporates components of the Mauna Kea Comprehensive Management Plan and its four subplans. The Court finds that the TMT Management Plan and the plans that it incorporates are clearly sufficient for the TMT Project.

4. Having reviewed the record on appeal and the BLNR’s FOF and COL relating to the TMT Management Plan, the Court finds the reversal of the Decision and Order is not warranted under the standards set forth under HRS § 91-14(g).

See May 5, 2014 Decision and Order, Appendix “B,” filed with Opening Brief on Appeal on January 14, 2015. ROA 40, V.5 at 44-45.⁴ Appellants set forth their arguments as to why the BLNR was clearly erroneous and wrong. See ROA 34, V.5 at 61-62; see also Transcript of Proceedings of December 13, 2013 (“12/13/2013 TR”) at 2, 4-9, 20-23, 26 (a copy of these selective pages of the transcripts were filed on January 14, 2015, along with Appellants’ Opening Brief on Appeal, as Appendix “F”).

4. The circuit court erred and was wrong when it found that the Board of Land and Natural Resources failed to meet its legal and constitutional obligations under Ka Pa’akai o Ka’aina v. Land Use Commission. The question presented to the circuit court was: “[w]hether the Board of Land and Natural Resources failed to meet its legal and constitutional obligations under Ka Pa’akai o Ka’aina v. Land Use Commission?” ROA 34, V.2 at 30. The circuit court was clearly erroneous and wrong and had reversibly erred when it found:

C.1. In the contested case hearing, at Appellants’ request, the parties stipulated that Appellants Neves, Ching Flores, Case, and Pisciotta would be recognized as expert witnesses on their cultural practices regarding Mauna Kea. Appellants now argue that this stipulation somehow resulted in their providing insufficient evidence of traditional and customary native Hawaiian cultural practices. Having reviewed the record on appeal and the BLNR’s FOF and COL’s, the Court finds that Appellants were afforded the full opportunity to provide their written direct testimonies prior to the stipulation, and were also afforded an opportunity to provide oral summaries of their testimonies after the stipulation. Appellants also appear to argue that it was assumed, based on the stipulation, that certain expert opinion testimony would be deemed conclusive. However, clearly, the

⁴ The Findings/Conclusions in the May 5, 2014 Decision under E is also challenged. ROA 40, V.5 at 45. Without waiving position regarding requirements of secondary appeal as set forth in fn. 1 above, BLNR’s FOF’s #217-235 and COL’s #38 & 89-116 and any other findings and conclusions related to the management plan as being sufficient are also being challenged as being clearly erroneous and wrong, respectively.

presentation of expert opinion testimony is not conclusive; as with any testimony, the factfinder may accept or reject it. *See Miyamoto v. Lum*, 104 Hawai'i 1, 16, 84 P.3d 509, 524 (2004). The Court, therefore, rejects Appellants' arguments.

2. Having reviewed the record on appeal and the BLNR's FOF and COL relating to native Hawaiian cultural practices relating to native Hawaiian customary and traditional practices were not clearly erroneous, and that reversal of the Decision and Order is not warranted under the standards set forth under HRS § 91-14(g).

See May 5, 2014 Decision and Order, Appendix "B," filed with Opening Brief on Appeal, on January 14, 2015. ROA 40, V.5 at 43-44.⁵ Appellants set forth their arguments as to why the BLNR was clearly erroneous and wrong. See ROA 34, V.5 at 57-61; see also Transcript of Proceedings of December 13, 2013 ("12/13/2013 TR") at 2, 4-9, 20-23, 26 (a copy of these selective pages of the transcripts were filed on January 14, 2015, along with Appellants-Appellants' Opening Brief on Appeal, as Appendix "F").

See Statement of the Points of Error of Appellants-Appellants' Opening Brief on Appeal, filed on January 14, 2015 at 7-11.

V. THE CASE MEETS THE STATUTORY QUALIFICATIONS FOR TRANSFER

H.R.S. Section 602-58(a) provides, in pertinent part:

(a) The supreme court, in the manner and within the time provided by the rules of court, **shall** grant an application to transfer any case within the jurisdiction of the intermediate appellate court to the supreme court upon the grounds that the case involves:

(1) A question of imperative or fundamental public importance;

(2) An appeal from a decision of any court or agency when appeals are allowed by law:

...

⁵ The Findings/Conclusions in the May 5, 2014 Decision under E is also challenged. ROA 40, V.5 at 45. Without waiving position regarding requirements of secondary appeal as set forth in fn.1 above, BLNR's FOF's #91, 345-396, 423-429, 467-474 (to the extent that they do not support customary practices and tradition and Ka Pa'akai requirements) and COL's # 39-42, 108-114, 175, 192-205, 210-223, 48-52, 53-62, 89-116, 117-124, 125-142, 125-142, 143-152, 153-162, 175, 224-232, and 243-257, and other findings and conclusions supporting the issuance of the CDUP under the criterion, are also being challenged as clearly erroneous and wrong, respectively.

(B) Determining a state statute, county ordinance, or agency rule to be invalid on the grounds that it was invalidly enacted or is unconstitutional, on its face or as applied, under either the constitution of the State or the United States...

...

(b) The supreme court, in a manner and within the time provided by the rules of court, may grant an application to transfer any case within the jurisdiction of the intermediate appellate court to the supreme court upon the grounds that the case involves:

- (1) A question of first impression or a novel legal question; or
- (2) Issues upon which there is an inconsistency in the decisions of the intermediate appellate court or of the supreme court.

...

A. THE INSTANT CASE MEETS THE STATUTORY QUALIFICATIONS FOR REQUIRED TRANSFER TO THE SUPREME COURT

The instant case clearly provides a question of imperative or fundamental public importance.

There probably has not been a larger and more discussed and hotly debated issue in the media and throughout the State of Hawaii over the period of over the last month than the proposed construction of the Thirty Meter Telescope (TMT) at Mauna Kea on the Island of Hawai'i. The issue has been covered by all traditional media sources in the State of Hawaii, including feature television news reports and newspaper headline stories. In fact, the issue has spread nationally and globally through social media as well as through traditional media. Numerous rallies in opposition to the TMT project have occurred throughout the State of Hawaii and also nationally and in some other parts of the world. Opponents of the TMT have held marches through downtown Honolulu to the State Capitol and have held other rallies in the downtown area. The Governor has also been presented with petitions that included over 53,000 signatures in opposition. The Appellants-Appellants respectfully request that this Honorable Court take judicial notice, pursuant to HRE Rule 201, for purposes of the instant application for transfer, in showing the question of imperative or fundamental public importance, as required by the statute and the rules, the selective news articles that are attached hereto as Appendix "A."

The Office of Hawaiian Affairs, that had previously passed a resolution in 2009 in support of the TMT project, rescinded its support of the TMT Project in a vote before the Board

on Thursday, April 30, 2015. Numerous people had testified before the OHA Board of Trustees and a sit-in had also occurred at the Office of Hawaiian Affairs' offices. The arrests of 31 people have already taken place at Mauna Kea of opponents to the TMT project, who have been called protectors of the Mauna.

As was adduced in the record in the instant case, "it is clear that to many Hawaiians, Mauna Kea is more than a mountain; it is the embodiment of the Hawaiian people." ROA 42, V. 6 at 15. Mauna Kea is a burial ground for Native Hawaiians' highest born and most sacred ancestors. ROA 80, V. 25 at 39, ROA 166, V.2 at 10; ROA 142, V. 56 at 120. In the Appellees Board of Land and Natural Resources, Department of Land and Natural Resources, and William J. Aila, Jr.'s (Appellees BLNR) Answering Brief, filed on March 25, 2015, Appellees BLNR asserted that "[t]his case concerns one of the most important projects in the world today. The Thirty Meter Telescope is a joint project by institutions from the United States, Japan, China, India, and Canada to construct the world's most advanced and powerful ground-based optical, near infrared, and mid-infrared observatory." Appellees BLNR's AB at 1.

Without question, the instant case is one that involves a question of imperative or fundamental importance.

In addition, the legal issues presented in this case, including the timing of the approval of a CDUP with respect to when contested case hearings are held, the issues of whether something of the magnitude of the construction of the project of the instant case in a conservation district meets the criterion of the Hawaii Administrative Rules and also whether it is consistent with the statutory purposes of a conservation district, and the issues involving Ka Pa'akai, and other issues, the Petitioners-Appellants-Appellants submit are all questions of imperative or fundamental public importance.

B. THE INSTANT CASE ALSO MEETS THE DISCRETIONARY REQUIREMENTS OF TRANSFER TO THE SUPREME COURT.

Although the issues do not necessarily include inconsistencies between the Intermediate Court of Appeals and the Hawaii Supreme Court as it currently stands, the Hawaii Supreme Court, had granted an application for a writ of certiorari, following the ICA's Memorandum Opinion on Kilakila 'O Haleakala v. Board of Land and Natural Resources; Department of Land and Natural Resources; William Aila, Jr.; and the University of Hawai'i (No. CAAP-13-0003065, October 17, 2014). Oral arguments, in that case, were recently held on April 2, 2015

before the Hawaii Supreme Court (SCWC-13-0003065). The Petitioners submit that some of the issues in that case are either the same or quite similar to the instant appeal, including, but not limited to, the issues involving the examination of the criteria, under Hawaii Administrative Rules Section 13-5-30(c), for the issuance of a conservation district use permit for the construction of an observatory, although factually, there are various differences between the two cases. In the Kilakila case, there were twelve (12) issues on appeal that were considered by the Hawaii Supreme Court.⁶

VI. CONCLUSION.

Based on the foregoing, Petitioners-Appellants-Appellants respectfully request that this Honorable Court grant their application for transfer to the Supreme Court of the State of Hawaii and that the Appeal be transferred to this Honorable Court.

DATED: Honolulu, Hawaii, May 10, 2015.

/s/ Richard Naiwieha Wurdeman

RICHARD NAIWIEHA WURDEMAN
Attorney for Petitioners-Appellants-Appellants
MAUNA KEA ANAINA HOU and
KEALOHA PISCIOTTA; CLARENCE
KUKAUAKAHI CHING; FLORES-CASE
OHANA; DEBORAH J. WARD; PAUL K.
NEVES; and KAHEA: THE HAWAIIAN
ENVIRONMENTAL ALLIANCE, a
domestic non-profit corporation

⁶ Attached hereto as Appendix "B" is a true and correct copy of the Order Accepting Application for Writ of Certiorari, filed on January 7, 2015, in Kilakila 'O Haleakala v. Board of Land and Natural Resources, et al., SCWC-13-0003065, and a copy of an announcement that was copied from the State of Hawaii Judiciary web page announcing the date and time of the oral arguments before the Hawaii Supreme Court in Kilakila and the twelve (12) issues raised in the application for a writ of certiorari in that case. Petitioners also respectfully request that this Honorable court take judicial notice of these documents for purposes of the application for transfer.

IN THE SUPREME COURT OF THE STATE OF HAWAII

MAUNA KEA ANAINA HOU;	)	CIVIL NO. 13-1-0349
CLARENCE KUKAUAKAHI CHING;	)	(Agency Appeal)
FLORES-CASE 'OHANA; DEBORAH J.	)	
WARD; PAUL K. NEVES; and KAHEA:	)	APPEAL FROM:
THE HAWAIIAN ENVIRONMENTAL	)	
ALLIANCE, a domestic non-profit	)	1) FINAL JUDGMENT FILED ON
corporation,	)	MAY 5, 2014
	)	
Petitioners-Appellants-Appellants,	)	2) DECISION AND ORDER
	)	AFFIRMING BOARD OF LAND AND
vs.	)	NATURAL RESOURCES, STATE OF
	)	HAWAII'S FINDINGS OF FACT,
BOARD OF LAND AND NATURAL	)	CONCLUSIONS OF LAW AND
RESOURCES, STATE OF HAWAII;	)	DECISION AND ORDER GRANTING
DEPARTMENT OF LAND AND	)	CONSERVATION DISTRICT USE
NATURAL RESOURCES, STATE OF	)	PERMIT FOR THE THIRTY METER
HAWAII; WILLIAM J. AILA, Jr., in his	)	TELESCOPE AT THE MAUNA KEA
official capacity as Chair of the Board of	)	SCIENCE RESERVE DATED APRIL
Land and Natural Resources and Director	)	12, 2013, FILED ON MAY 5, 2014
of the Department of Land and Natural	)	
Resources; and the UNIVERSITY OF	)	THIRD CIRCUIT COURT
HAWAII AT HILO,	)	
	)	HONORABLE GREG K. NAKAMURA
Respondents-Appellees-Appellees.	)	Judge
	)	
	)	

DECLARATION OF RICHARD NAIWIEHA WURDEMAN

I, RICHARD NAIWIEHA WURDEMAN, do hereby declare as follows:

1. I am a duly licensed attorney admitted to practice before this Honorable Court and I represent Petitioners-Appellants-Appellants MAUNA KEA ANAINA HOU and KEALOHA PISCIOTTA; CLARENCE KUKAUAKAHI CHING; FLORES-CASE OHANA; DEBORAH J. WARD; PAUL K. NEVES; and KAHEA: THE HAWAIIAN ENVIRONMENTAL ALLIANCE, a domestic non-profit corporation, in the instant action.

2. I make this declaration based on personal information, knowledge, and belief and I am competent to testify to the matters set forth herein.

3. The instant application for transfer to the Hawaii Supreme Court is being made in good faith and not for purposes of delay or for any improper purpose.

4. Attached hereto as Appendix "A" are true and correct copies of selective news articles (and commentaries) involving the proposed Mauna Kea Thirty Meter Telescope Project and/or related issues that were copied from the respective news' services websites. The Petitioners respectfully request that this Honorable Court take judicial notice of these articles, for purposes of the instant application, pursuant to HRE Rule 201, as the Petitioners submit that such articles support the issue of the question of imperative or fundamental public importance, that is a mandatory basis for transfer under H.R.S. Sect. 602-58(a)(1).

5. Attached hereto as Appendix "B" is a true and correct copy of the Order Accepting Application for Writ of Ceritorari, in Kilakila 'O Haleakala v. Board of Land and Natural Resources, SCWC-13-0003065, filed on January 7, 2015. Also, attached hereto as Appendix "B" is a copy of an announcement of the date and time of the oral arguments before the Hawaii Supreme Court in Kilakila and the twelve (12) issues raised in the application for a writ of certiorari in that case that was copied from the State of Hawaii Judiciary website. Petitioners also respectfully request that this Honorable court take judicial notice of these documents for purposes of the instant application for transfer.

6. I, RICHARD NAIWIEHA WURDEMAN, do declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawaii, May 10, 2015.

/s/ Richard Naiwieha Wurdeman
RICHARD NAIWIEHA WURDEMAN

APPENDIX “A”

Hawaii Local Breaking News and Headlines - Protesters arrested blocking road to Mauna Kea telescope site - Hawaii News - Honolulu Star-Advertiser

StarAdvertiser.com

Protesters arrested blocking road to Mauna Kea telescope site

By Star-Advertiser Staff & Associated Press

POSTED: 11:43 a.m. HST, Apr 02, 2015

LAST UPDATED: 03:05 p.m. HST, Apr 02, 2015

Protesters opposing the construction of one of the world's largest telescopes on Hawaii island on Thursday temporarily blocked the road leading to the top of the mountain, leading to 12 arrests.

Hawaii County police spokeswoman Chris Loos said Thursday that some people were arrested in the protest on the road to the Mauna Kea summit, but he didn't provide a specific number.

Police warned the protesters this week that they would be arrested if they continued to block vehicles on the road. The protesters said they wouldn't back down.

In a written statement Thursday from TMT Observatory Corp., the nonprofit heading the construction, Project Manager Gary Sanders said: "We regret that police action had to be taken to enable our legal access to the project site. TMT respects the rights of everyone to express their viewpoints. We also respect the laws of the State of Hawaii and the seven-year public process and authority that granted us permits to build the Thirty Meter Telescope in the Maunakea Science Reserve's Astronomy Precinct. Like most people in the community we truly believe that science and culture can coexist on Mauna Kea as it has for the past 50-years along with other public uses."

The telescope, billed as the world's largest and expected to take a decade to build, is planned on more than five acres that the University of Hawaii subleases from the state.

The mountain is held sacred by Native Hawaiians, and opponents tried to prevent the construction of the Thirty Meter Telescope. They questioned whether land appraisals were done correctly and whether Native Hawaiian groups had been consulted.

Work got underway after protesters were arrested and their path was cleared to the summit, Sandra Dawson, a spokeswoman for the project, said in an email to The Associated Press.

Scientists hope to use the telescope to see 13 billion light years away, giving them a look into the early years of the universe. The mountaintop, which Native Hawaiians consider sacred, is an ideal location for observing the most distant parts of the universe, astronomers said.

Opponents who question whether land appraisals were done correctly and whether Native Hawaiian groups had been consulted have tried to prevent the construction of the \$1.4 billion

telescope.

The 15 people arrested Thursday were trying to block trucks heading to the peak, Pisciotta said. After the vehicles were allowed to pass, about 40 to 50 people began following the trucks, which moved slowly because of their heavy loads, she said.

About 300 protesters, whom she called "protectors," were on the mountain, Piscottia said. She was not on the mountain but was in contact with the protesters.

Protests also disrupted a groundbreaking and Hawaiian blessing ceremony last year, but no one was arrested. In fact, some protesters who yelled during the ceremony attempt later apologized to event organizers and helped put away chairs, Pisciotta said.

"We said aloha to each other and we hugged," she said.

Native Hawaiian leaders have been meeting and talking about the issue with state officials, police and prosecutors, Pisciotta said. "We have told them that this is desecration, and there are laws against desecration," she said.

Sanders said he and others at the telescope project respect the rights of everyone to express their viewpoints, but they also respect the seven-year process the state underwent to issue building permits.

"Like most people in the community, we truly believe that science and culture can coexist" on the mountain, he said, "as it has for the past 50-years along with other public uses."

The observatory is expected to be operational by 2024, the same year a 39-meter telescope is expected to be completed in Chile.

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Protest against Thirty Meter Telescope spreading worldwide

Posted: Apr 08, 2015 9:31 PM HST
Updated: Apr 09, 2015 9:50 AM HST

By Ben Gutierrez [CONNECT](#)

HONOLULU (HawaiiNewsNow) - Protests against the controversial Thirty Meter Telescope has spread far beyond the slopes of Mauna Kea. Rallies are now springing up around Hawaii, the mainland and around the world.

The movement against the telescope has been growing, even as construction has been halted for a week atop Mauna Kea.

Rallies were held Wednesday everywhere from Kailua-Kona to Kaneohe, where a traffic camera caught protesters holding signs along Kamehameha Highway and Likelike Highway.

The keiki at Halau Lokahi charter school also held signs and chanted along Waiakamilo Road.

"Mauna Kea is sacred, and our children are taught to respect our `aina," said teacher Leo Akana. "They understand that science is an important thing, but I think the state needs to realize that Hawaiians were the very first astronomers here."

The chorus of opposition has spread to the mainland. Dozens gathered at the iconic Las Vegas sign with signs and Hawaiian flags.

"We have to protect our `aina, we have to protect our culture, and as a people I think its important for us to gather here today to protect us as a Hawaiian people," said Las Vegas protester Nicole Oamilda.

Another gathering was held Wednesday evening atop Twin Peaks, the highest point in San Francisco. Hawaii musician Steven Espaniola, who now lives in the Bay Area, was among those there.

"I think the folks, especially here on the mainland, there's a sense of togetherness that we all feel, and it doesn't take much for us to get that call to action and start moving on something," he said.

If anything, the movement is only getting bigger, as more people are joining rallies or posting photos of support, everywhere from Oregon to Kentucky, New Mexico, North Dakota, Georgia and Massachusetts. There are even pictures and rallies from Korea, New Zealand, England and Germany.

Many of the gatherings are being spurred by social media. "That's how it spread so quickly," said Espaniola. "Just thank goodness for Facebook, Instagram and Twitter."

According to Espaniola, organizers in San Francisco are planning more rallies in the coming days. That also will likely be the case in Hawaii itself.

"Our people are not going to stand back," said Leo Akana. "We're going to continue to move forward."

SLIDESHOW: [We are Mauna Kea' movement goes global](#)

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Hawaii Local Breaking News and Headlines - Ige: 'Timeout' on Mauna Kea telescope construction - Hawaii News - Honolulu Star-Advertiser

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Ige: 'Timeout' on Mauna Kea telescope construction

By Star-Advertiser staff

POSTED: 11:30 a.m. HST, Apr 07, 2015

LAST UPDATED: 09:45 a.m. HST, Apr 08, 2015

Gov. David Ige said Tuesday there will be a "timeout" for about a week on the construction on the \$1.4 billion Thirty-Meter Telescope on the summit of Mauna Kea, which has been the scene of protests by Native Hawaiian activists and their supporters.

At a news conference Tuesday, Ige said he has been in "meaningful discussions" with groups that have an interest in the telescope, including University of Hawaii and the Office of Hawaiian Affairs officials, who agreed to the temporary suspension of work.

"We agreed there would be value to have some further dialogue on Mauna Kea," Ige said. "I do know it's a significant project and this will give us some time to engage in further conversations with the various stakeholders that have an interest in Mauna Kea."

Last week, Hawaii County police arrested and cited 31 people for trespassing and blocking work vehicles from reaching the construction site.

Protesters have been holding a vigil at the 9,000-foot level, objecting to the construction of what's being billed as the world's largest telescope. They say the mountain is sacred and that the 180-foot-tall project is too massive, threatening sacred shrines and burials and the island's water supply.

The UH approved a sublease agreement for about nine acres leased from the state last year after the state Board of Land and Natural Resources approved the project in 2013. The BLNR approval came after a seven-year environmental review that featured more than 20 public hearings.

Astronomers say the Thirty Meter Telescope will be the most advanced and powerful optical telescope on earth, capable of viewing galaxies at the edge of the observable universe, near the beginning of time.

Although legal challenges are pending in court, the Land Board signed off on a notice to proceed with construction March 6, allowing construction equipment to be hauled to the site.

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By Paula
Akana
BIO

OHA trustee calling for moratorium on Mauna Kea telescope

Longtime community activist Ritte says the goal to get "all of these observatories off the mountain"

Published 7:54 PM HST Apr 03, 2015

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HILO, Hawaii — A quieter day at Mauna Kea on Good Friday. There were no arrests on this holiday and no construction was underway on the Thirty Meter Telescope.

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Protesters were back again. They did turn away a truck for a company that was to build a fence around the construction site.

Protesters were allowed on the site where they walked around and built an ahu — a far cry from Thursday when there were arrests.

On Friday, an Office of Hawaiian Affairs trustee and a community activist were brought together and called for action.

Two Hawaiian community leaders with similar concerns but different messages.

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"The goal now is not to stop the building of this observatory. The goal now is to get all of these observatories off this mountain," said longtime community activist Walter Ritte.

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Strong words from Ritte in response to Thursday's arrests of 31 demonstrators protesting the building of the Thirty Meter Telescope at Mauna Kea, which is on ceded lands.

OHA trustee Peter Apo, speaking on behalf of himself, made it clear that, while he respects Ritte, getting rid of the telescopes is not his goal. Apo wants a stand down on construction of the telescope. He's calling on the governor and University of Hawaii President David Lassner to make it happen.

"By declaring a 30-day moratorium and create a quiet period to which time the governor should assemble the right set of leaders in an attempt to engage in meaningful, not condescending, meaningful conversation," said Apo.

Apo wants the state, along with Native Hawaiians, to revisit the management plans of Mauna Kea, which is ceded lands -- lands that formerly belonged to the Hawaiian Crown.

Both say the multi-year process leading up to the issuance of a building green light were flawed and pointed out there is still cases pending before the courts.

The tipping point? The arrests. Ritte says he met with the governor's chief of staff Mike McCartney, Lassner and the Department of Land and Natural Resources Wednesday night and left that meeting with the belief there were going to be no arrests.

"The arrests that are being made is really, in my opinion, a stunning error in judgement. And kind of an 'in your face' provocation to Native Hawaiians that a construction's schedule is more important than people," said Ritte.

The university issued this statement today:

"UH welcomes all calls for more dialogue and is actively meeting and addressing the issue at the highest levels."

McCartney issued this statement;

"We are aware of this situation and are deeply involved in discussions and conversations about this important matter. However, we must respectfully decline to comment at this time to protect the integrity of these discussions and allow productive conversations to continue."

Apo says he will also encourage OHA as a whole to get behind a push for a moratorium and renewed conversations.

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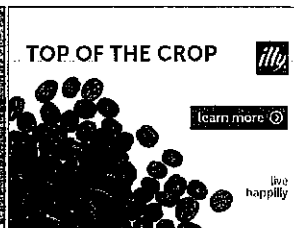
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Timeouts won't be enough to solve Mauna Kea debate

By Richard Borreca

POSTED: 01:30 a.m. HST, Apr 14, 2015

The new controversy and uprising of protests over the building of the world's biggest telescope atop Mauna Kea will neither go away nor be easily resolved.

According to Native Hawaiian tradition, Mauna Kea is about the creation of the Hawaiian islands.

Although in geographic terms, the Big Island is the youngest island, in cultural terms it is the beginning point of a culture.

"According to Native Hawaiian tradition, the 'Kea' in Mauna Kea is an abbreviation for Wakea, the great sky god, who along with Papa-hanau-moku, the Earth mother, and various other gods and natural forces, gave birth to the islands," explains the preface of the 2010 University of Hawaii environmental impact state for the construction of the 30-meter telescope on the mountain.

And according to the same EIS, for scientists hoping to use the telescope, this is not just another telescope.

Mauna Kea's proposed new telescope could "enable discoveries about the nature and origin of the physical world from the first formation of galaxies in the distant past and distant regions of the Universe to the formation of planets and planetary system today in our own Milky Way Galaxy."

Building this telescope is an important marker in what has been called a "150-year-long leadership position in astronomical research, discovery, and innovation by leveraging the Thirty Meter Telescope (TMT) partners' existing astronomy facilities in Hawaii."

Besides the actual ability to look back to the dawn of universe, the TMT gives some practical benefits. Hawaii island would get money and jobs. UH would get a better reputation, money and jobs.

On a political level, the EIS sounds like a politician's promise come true.

"The project could add a point of focus ... that could form the basis for technology-based, innovation-driven, job-producing activities around complementary activities in energy, agriculture and information technologies and scientific research and support," the EIS says.

If that was the good-cop EIS, the same 376-page document (<http://goo.gl/uKYDaP>) also offers

up a bad-cop warning.

"The existing level of cumulative impact on cultural, archaeological, and historic resources is substantial, significant and adverse," the report states.

Already, past construction has moved more than 10,000 cubic yards of material that has graded and flattened mountain ridges and changed the views from the summit.

"They are altering the images of our deities because puu's are being leveled and the telescopes are being built on top of her," one critic said.

But all of this is not just the fault of the TMT. While putting a road up to the summit helped build the telescopes, it also brought up the public.

The EIS says the mountain has been adversely affected, not only by astronomy, but by all the public and commercial activities, including snow play.

Hilo residents freely acknowledge that going up Mauna Kea during the short snow season is an annual tradition.

The UH study neatly divides how the enormous project is viewed. Both the Hawaiian culture and the astronomy community can co-exist on Mauna Kea and impacts can be mitigated — or any development on Mauna Kea will result in a significant adverse that cannot be mitigated, the report says.

So far Gov. David Ige has twice called for a halt to construction for the estimated \$1.4 billion project on the mountain while he meets with all parties involved.

But, no "try wait" timeout will solve this. It is not about picking between dismissing the creation of a culture or rejecting scientists' ability to view the dawn of creation; this decision is either go or no go, period.

Richard Borreca writes on politics on Sundays, Tuesdays and Fridays. Reach him at rborreca@staradvertiser.com.

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Hawaii Local Breaking News and Headlines - Mauna Kea telescope petition delivered with 53,000 signatures - Hawaii News - Honolulu Star-Advertiser

StarAdvertiser.com

Mauna Kea telescope petition delivered with 53,000 signatures

By Timothy Hurley

POSTED: 11:57 a.m. HST, Apr 20, 2015

LAST UPDATED: 05:05 p.m. HST, Apr 20, 2015



Foes of the Thirty Meter Telescope on Monday delivered to Gov. David Ige a petition with more than 53,000 signatures opposed to the \$1.4 billion project on Mauna Kea.

Kealoha Pisciotta, leader of the Mauna Kea Hui, also called on the governor to pardon the 31 "protectors" who were arrested April 2 trying to prevent work vehicles from reaching the

construction site at the summit of the 13,796-foot mountain.

In addition, Pisciotta asked Ige to rescind the appointment of state Attorney General Douglas Chin because he was the former managing partner of a law firm, Carlsmith Ball, which is representing the University of Hawaii and the TMT project in the lawsuits filed by the Mauna Kea Hui against the development.

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Hawaii News from the Honolulu Star-Advertiser - Trustees weigh in as telescope loses key supporter - Hawaii News - Honolulu Star-Advertiser

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Trustees weigh in as telescope loses key supporter

OHA no longer backs the project, but doesn't formally oppose it, either

By Timothy Hurley

POSTED: 01:30 a.m. HST, May 01, 2015

LAST UPDATED: 07:35 a.m. HST, May 01, 2015

Sending what they described as a strong message to those with oversight of the Mauna Kea summit, the Office of Hawaiian Affairs trustees voted Thursday to rescind their support of the Thirty Meter Telescope.

However, the board fell short of formally opposing the \$1.4 billion project, a move that disappointed a sizable contingent of Native Hawaiians who described the mountain as sacred and pleaded for a rejection of the TMT development during more than four hours of often emotional testimony.

"Not taking a stance doesn't do anything. It doesn't make a statement," said Kahookahi Kanuha, one of the leaders of the "protectors" of Mauna Kea, afterward. "We were looking for them to stand with the people. And how can you stand with the people when you're saying you have no opinion on the situation?"

Former OHA trustee Moanikeala Akaka of Hilo agreed.

"We thought they heard our people's voices," said Akaka, one of the 31 arrested for protesting on the mountain April 2. "Not only here, but throughout these islands and throughout the world people, have been saying, 'Protect Mauna Kea.' Unfortunately, it's on deaf ears."

Gunther Hasinger, director of the University of Hawaii Institute for Astronomy, said that while he too was disappointed with the vote, he said the trustees made "a wise decision" to essentially stay neutral so they can "stay at the negotiating table."

"The whole future of the mountain is at stake," he said after the meeting at OHA's offices in Iwilei. "From my point of view, we need to find a way to share this mountain and its sacredness."

In a statement issued following the vote, Henry Yang, chairman of the TMT International Observatory Board, said, "We are naturally disappointed that the Office of Hawaiian Affairs has changed its position on the Thirty Meter Telescope project. However, we are by no means discouraged. We must now redouble our commitment to respectfully continuing dialogue and engagement with OHA and all other stakeholders."

During the board discussion, the trustees informally counted four votes in favor of rescinding

only — Peter Apo, Colette Machado, Haunani Apoliona and Rowena Akana — and three votes in favor of opposition — Carmen "Hulu" Lindsey, Dan Ahuna and Lei Ahu Isa. Chairman Robert K. Lindsey Jr. and John Waihee IV were absent.

But four votes are not a majority of the nine-member board, and they wouldn't have been enough to overturn the trustee's 2009 vote in support of the project. That prompted some vote-switching, with trustees ultimately casting six votes to rescind, no votes against and one — Ahuna — abstaining.

Before the vote, Lindsey read a statement from Abigail Kawanānakoā, who blasted UH for its "abysmal" effort in taking care of the mountain over the years, and Ahuna launched into an impassioned speech, urging the trustees to stand with the people and oppose the TMT.

"Self-determination is right at our fingertips," Ahuna said. "We have the opportunity to send a strong message that it is no longer business as usual for Native Hawaiians."

Other board members pushed for the neutral position, saying it would give OHA a better position in negotiating for changes to a range of concerns, including the decommissioning of telescopes and the review of the Mauna Kea Master Plan and Mauna Kea master lease, which expires in 2033.

"It's about more than the telescope. It's about the management of the entire mountain," Apo said. He added that "If we oppose, we are going to take ourselves out of the field of play."

Machado said political realities demand that OHA remain neutral. She said the vote puts Gov. David Ige, the state Board of Land and Natural Resources and the UH Board of Regents on notice that OHA will press for important changes.

"If we oppose, they are going to look at us and say, 'OK, we'll push you aside for later,'" she said.

Sensing a restless crowd, Akana stood up and said, "I give you my word. With this motion I stand with you. I will go to the university. I will stand against the governor and anybody else for you. I promise you this. We are standing for you."

Afterward, Lanakila Mangauil, another leader of the "protectors," said he wasn't buying the seat-at-the-table argument. He said the protect Mauna Kea movement has already won a seat at the table.

"They could still be part of it," he said.

Mangauil added that while many of his contemporaries are eager to oppose the TMT, the kupuna on the OHA board are simply more cautious. "It's not what we wanted but it is a step," he said.

Construction of the telescope has been on hold while the TMT Observatory Corp. considers how to proceed in the face of opposition on the mountain.

With partners that include universities and astronomy institutions in the United States, India,

China and Japan, the Pasadena, Calif.-based nonprofit is planning an 18-story-tall "next generation" optical/infrared observatory capable of seeing more than 13 billion light-years away.

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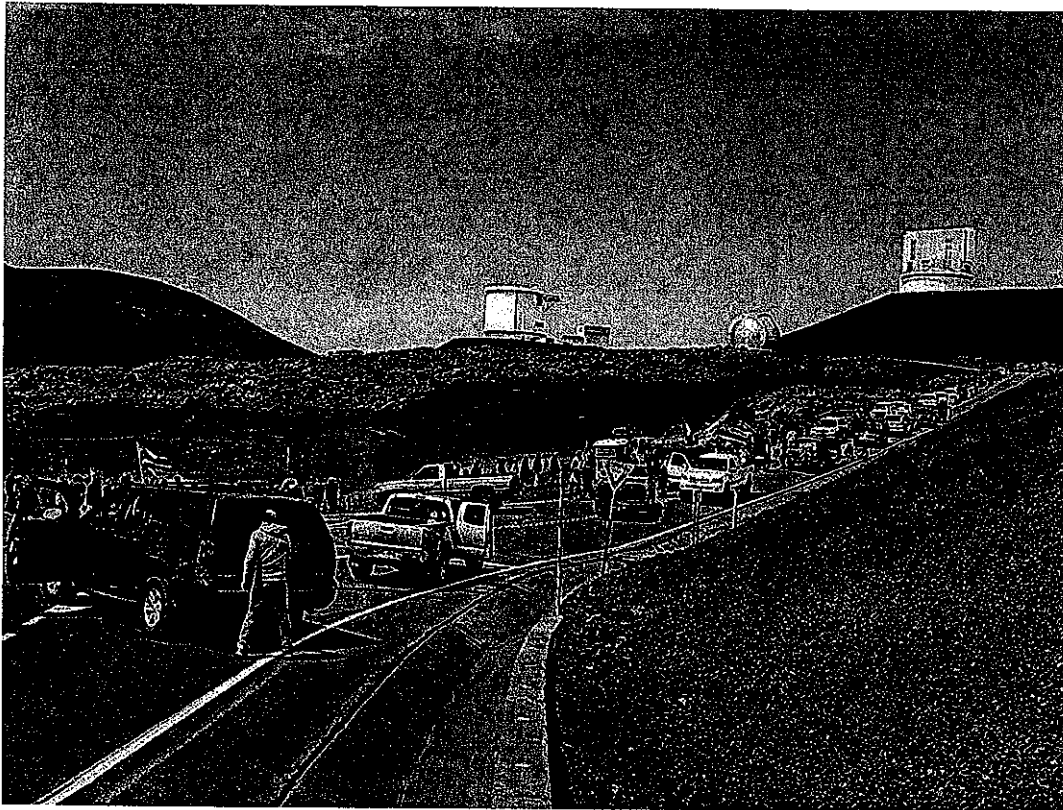
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The Heart of the Hawaiian Peoples' Arguments Against the Telescope on Mauna Kea

Native Hawaiians are not protesting science, but instead are seeking respect for sacred places, and our planet



On October 7, 2014, protestors blocking the road, halted a groundbreaking ceremony for the Thirty Meter Telescope. (AP Photo/Hawaii Tribune-Herald, Hollyn Johnson)

By Doug Herman
smithsonian.com
April 23, 2015

At this moment all over the Hawaiian islands, but especially atop Mauna Kea volcano, there are protests against the building of a new Thirty-Meter Telescope (TMT) on this sacred mountain. The telescope has become a cause célèbre among Native Hawaiians and their allies, and the issue is going viral. Newspapers around the world are reporting the story and people are abuzz on social media—especially as the issue becomes more emotionally charged. This week, a University of California, Berkeley professor sent around a petition in favor of the telescope with language in it that has incited charges of racism. A group of scientists countered with a statement saying the message was unacceptable.

From the outside, this argument may seem like another case of Native beliefs versus modern science. As astronomer Tom Kerr wrote back in 2011, "It seems to me that it's an argument about returning to the stone age versus understanding our universe and it'll be interesting to see who wins in the end."

Mauna Kea is the highest peak in the Hawaiian islands. This massive dormant volcano rises 13,796 feet (4,205 m) above sea level and in the winter its top is often blanketed in snow. “Mauna kea” means “white mountain,” but there are those who say it is short for “Mauna o Wakea,” the mountain of the Hawaiian deity *Wakea*. Either way, its summit is considered to be a most sacred—if not the most sacred—spot in the Hawaiian archipelago. Its rugged peak, covered in small cinder cones or *pu‘u*, is the home to a handful of Hawaiian deities.

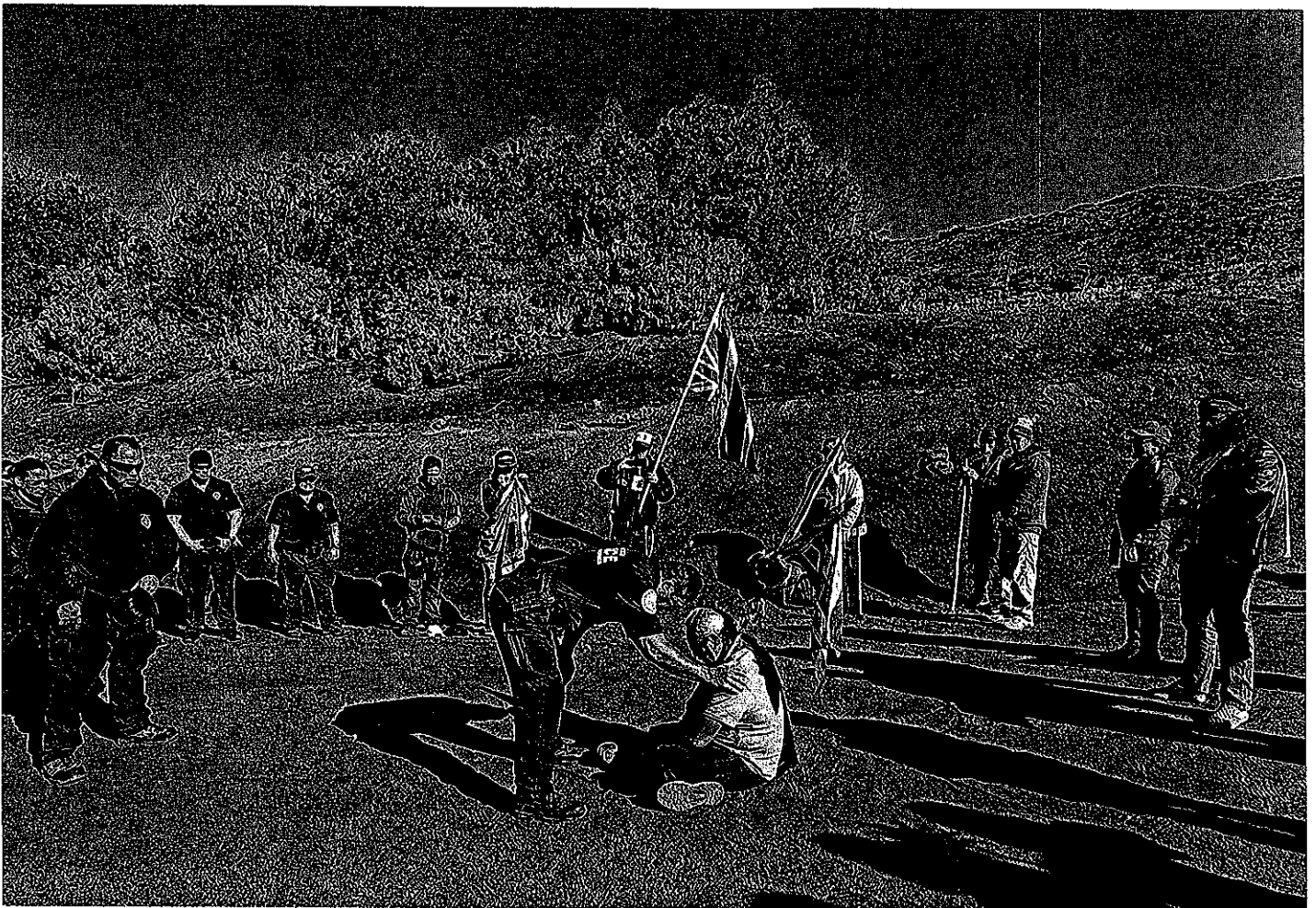
But because the Hawaiian Islands lie far out in the middle of the Pacific, far from any continental landmass, and because the atmosphere is much cleaner and there is far less “light pollution” from urban areas, this makes Mauna Kea one of the best places on the planet for astronomical observatories. So it is also home to the world's largest, with 13 working telescopes operated by astronomers from 11 different countries. (The Harvard Smithsonian Center for Astrophysics operates the Submillimeter Array (SMA) on Mauna Kea, but is involved in the construction of the Giant Magellan Telescope in Chile's Atacama desert rather than this one on Mauna Kea.) The new TMT would enable astronomers to see “forming galaxies at the very edge of the observable Universe, near the beginning of time.”

And this is where the problem lies.

Astronomy on Mauna Kea has been a boon to the University of Hawaii and brought income to the State. The nearby town of Hilo takes pains to honor its neighbor and has low-intensity street lights to keep ambient light to a minimum.

But protests against construction on Mauna Kea have been going on for decades. The existing white observatory buildings are readily seen (on clear days) from many parts of the island. And while the current project has engaged in a lengthy public review process, including consultations with Native Hawaiian groups, the history has been far less sensitive to Native opinion.

What is really at stake, however, is a conflict between two ways of knowing and being in the world. For many Native Hawaiians and other Indigenous peoples, sacredness is not merely a concept or label. It is a lived experience of oneness and connectedness with the natural and spiritual worlds. It is as common sense as believing in gravity. This experience is very much at odds with the everyday secular-humanist approach of Western thinking that emerged out of the Enlightenment (as I have discussed in a previous essay), and which sees no “magic” or “enchantment” in the world. And of course, seeing nature as inert facilitates both commercial exploitation and scientific exploration.



Protesters have for the past three weeks created a human blockade. More than 30 people have been arrested. On April 2, 2015, a Department of Land and Natural Resources Officer speaks with one of the activists. (AP Photo/Hawaii Tribune-Herald, Hollyn Johnson)

Since climate change and other mounting environmental issues are pushing more and more people to accept that our dominant view of the planet is flawed, increasing numbers of non-indigenous peoples are looking towards traditional worldviews for approaches that are more conscientious, respectful and encouraging of stewardship for our planet and its special places. And it is this nerve, among others, that is stirring the current protests over the TMT.

More than that, however, is the legacy of colonialism in the Hawaiian islands. Ever since a dozen or so non-native businessmen overthrew the legal and world-recognized government of the Hawaiian Kingdom in 1893, the islands have been inundated with immigrants and development, while Native Hawaiians themselves sank to the bottom in terms of many social and economic indicators. Countless Hawaiian sacred sites have been bulldozed, dismantled, or even used for military target practice. Unsurprisingly, this has left a great many Native Hawaiians very unhappy. And with the 1970s cultural renaissance and the increase in political awareness, many are taking a bolder stance against further desecration of Hawaiian culture and traditional sites.

Enter the TMT. Now to say Hawaiians are opposed to technology or science is simply wrong. Hawaiians have a long and illustrious tradition of adopting Western technologies. King Kalākaua had electricity in his palace before the White House had it. And he is quoted as follows:

"It will afford me unfeigned satisfaction if my kingdom can add its quota toward the successful accomplishment of the most important astronomical observation of the present century and assist, however humbly, the enlightened nations of the earth in these costly enterprises..." ~ King Kalākaua, September 1874 as quoted in the Pacific Commercial Advertiser, upon arrival of a British expedition of astronomers to

But that was when Hawaiians were in control of their own country, and before the devastating impacts of American rule. Now many are saying “enough.” The TMT, while not being built on one of the sacred pu‘u at the summit, will be a much larger and more extensive project than any before, with a building 18 stories tall and an impact on five acres of summit. The project has gone through extensive reviews for its environmental and cultural impacts, and was originally supported by the Office of Hawaiian Affairs (OHA) in 2009. But in an April 12 poll by the Honolulu *Star-Advertiser*, 61 percent of respondents said OHA should oppose the TMT. As OHA Trustee Peter Apo points out, “Hawaiians are joined by ecological and environmental watchdog constituencies with natural resource management concerns about stewardship issues in the state’s management of the geo-cultural landscape of plants, native birds, rare insects, historic sites, and so forth.”

Meanwhile, Native Hawaiians and others from around the state have come to protest, including hula dance troupes. University of Hawaii students and faculty staged a walk-out. Protesters camping out on the top of the mountain have created a human blockade for three weeks, and more than 30 people have been arrested, creating some poignant moments between Native Hawaiian police and protesters and prompting a third moratorium on the construction, this time with no end date. But as vigorous as the protests have been, they have also been peaceful and respectful. As organizer Kealoha Pisciotta has said, “It’s a temple. You can’t make war in a temple. You can stand for righteousness. It demands *aloha*.”

The dilemma here is tough on both sides. The TMT people say that the telescope “is committed to a new paradigm of development on Mauna Kea founded on integrating culture, science, sustainability and education.” If so, people on the culture side are far from satisfied. But, as several have pointed out, it is not because they are against science.

About Doug Herman



Doug Herman, Senior Geographer at the National Museum of the American Indian, specializes in the cultural knowledge of Hawaii and Pacific Islands. His work focuses on the revitalization of traditional knowledge and values as lessons for all people on how to live more sustainably today.

Apr 27, 2015 08:48 PM EDT

Protestors On Mauna Kea Aren't Aloneâ€”Cyberterrorists Attack TMT Site on Sunday

It seems locals aren't the only ones upset about the construction of one of the world's largest telescopes near the summit of Mauna Kea, which is already home to not one but 13 large telescopes. The Thirty Meter Telescope will be one of the largest in the world when completed, but today, those opposed to the project received help from cyber protesters as they hacked the Thirty Meter Telescope website bringing it down for about two hours.

Thirty Meter Telescope spokeswoman Caroline Witherspoon confirmed that the company's website suffered the disruption, but could not say who was responsible. She said as a result of the attack the website was unavailable for about two hours.

"TMT today was the victim of an unscrupulous denial of service attack, apparently launched by Anonymous," said Sandra Dawson, a spokeswoman for the project. "The incident is being investigated."

Why all the uproar over a telescope? Native Hawaiians consider the land on top of Mauna Kea to be sacred and have opposed the telescope project from the very beginning. Recently, the protests have become so strong Hawaii Governor David Ige arranged to halt its construction in order to further discuss the matter with all those involved.

Operation Green Rights is a group that has been cyber protesting the TMT and has stated that it is affiliated with the hacker group Anonymous. On Sunday, Operation Green Rights posted images on its page Sunday claiming responsibility for the attack. The page included screen grabs of both the Thirty Meter Telescope website as well as the main website of the Hawaii state government indicating that both had been attacked.

Cindy McMillan, Ige's director of communications, could not confirm whether or not the government's sites were disrupted but had asked security personnel to investigate.

So why build telescopes there at all? The placement of the TMT was chosen for many of the same reasons people are protesting. By placing the telescope at the summit of Mauna Kea, it is far away from any type of civilization in an area that is secluded and simply well suited for a telescope such as the TMT.

However, the people of Mauna Kea do not want another telescope dotting their landscape, so the protests continue. Construction of the Thirty Meter Telescope is predicted to take between eight and ten years and the TMT organization seems pretty set on the location. But so do the locals and with the support of groups such as Operation Green Rights, could be prepared for a longer battle than many expect.

Mauna Kea defenders protest against 18-storey high telescope



By BBC Trending What's popular and why

- 10 April 2015

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A controversial telescope project on the top of the Mauna Kea mountain in Hawaii has sparked peaceful protests on and off social media across the United States.

Opponents of the telescope, including celebrities, say the structure desecrates sacred land.

They also say the land in question is designated as a conservation area.

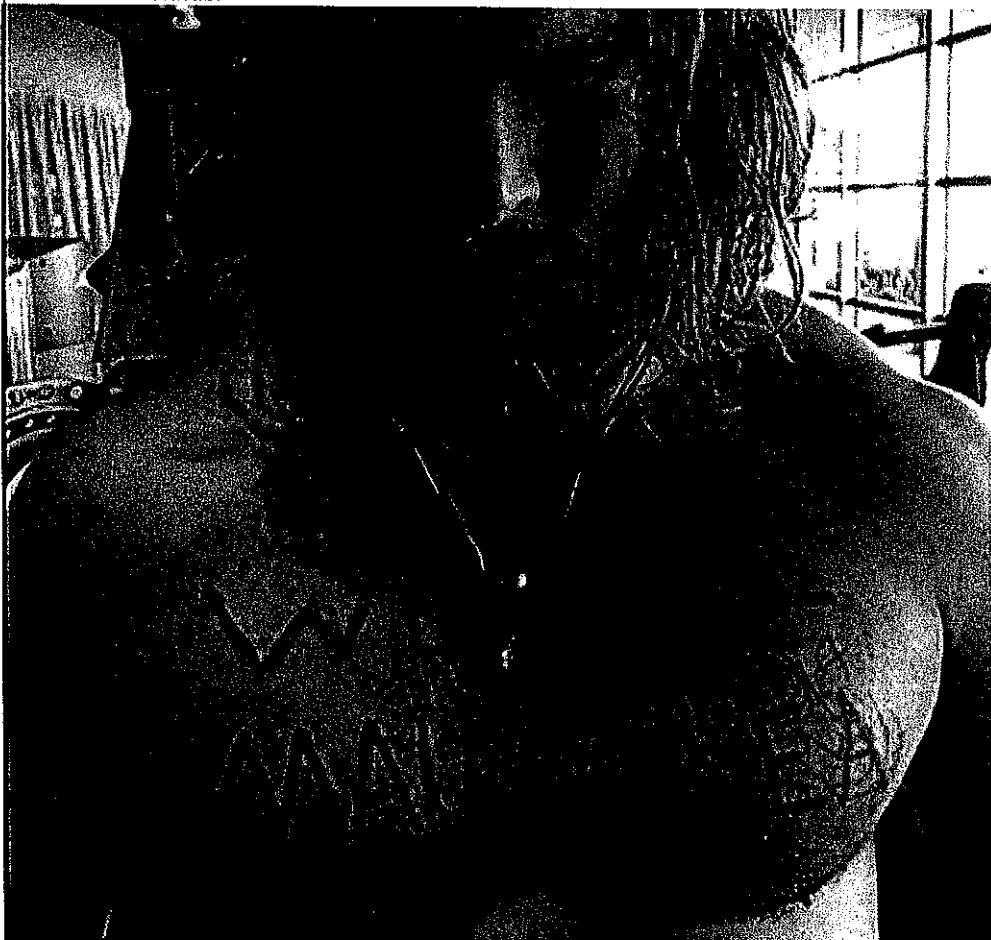
Supporters of the project point out that there are already 13 telescopes built within that conservation zone.

But none are as large as the latest planned structure, dubbed the Thirty-Meter Telescope, which would require the destruction of five acres of land.

The Honolulu-born Game of Thrones star Jason Momoa posted pictures on Instagram and Twitter using the hashtag #WeAreMaunaKea, That and the hashtag #ProtectMaunaKea have seen big jumps in use this week.

San Francisco Giants' pitcher Madison Bumgarner, Pussycat Doll Nicole Scherzinger and Momoa's on-screen spouse, Emilia Clarke, and real-life partner, Lisa Bonet, also got involved.

Momoa's **Instagram account** is currently dedicated to the issue with a link to an online petition pasted as his status.

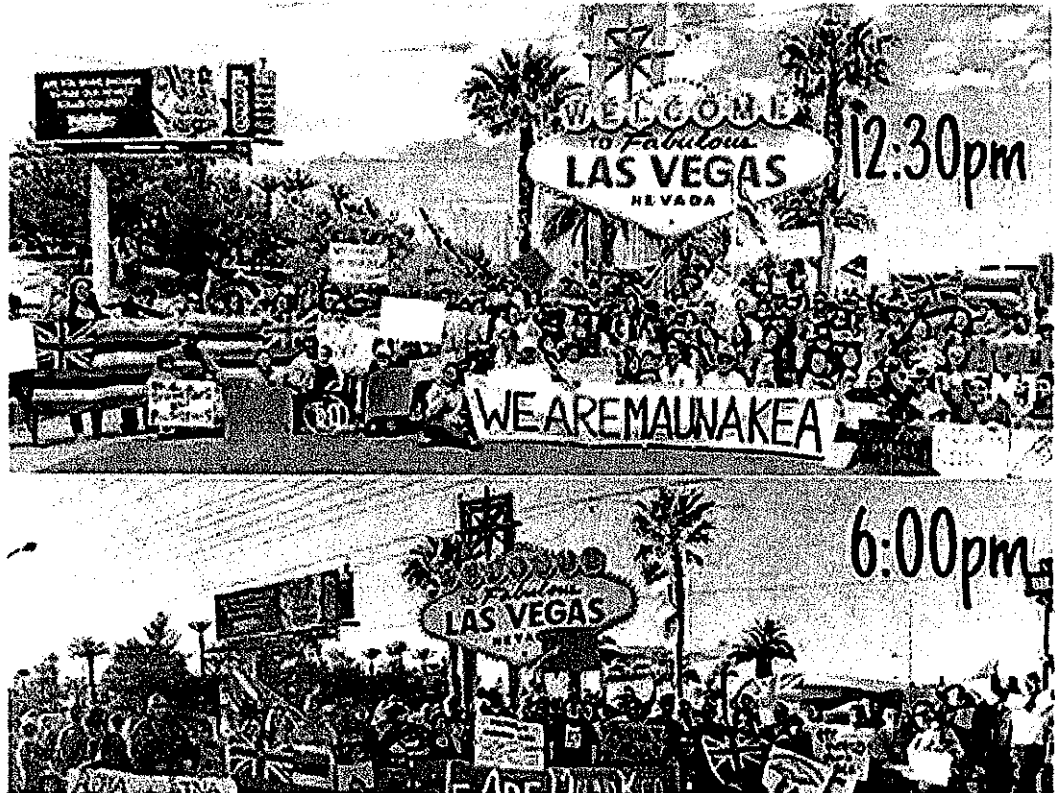


The Instagram account **@ProtectMaunakea** also hosts pictures of hundreds of people who have posted signs in support of the conservation efforts.

Organisers protested off social media as well by holding a worldwide sign waving with participants from Hawaii, Alaska, New York City, Las Vegas, Kentucky, Arizona, Tahiti and Tonga.

Vegas doing it right 🍌🍌 #WeAreMaunaKea

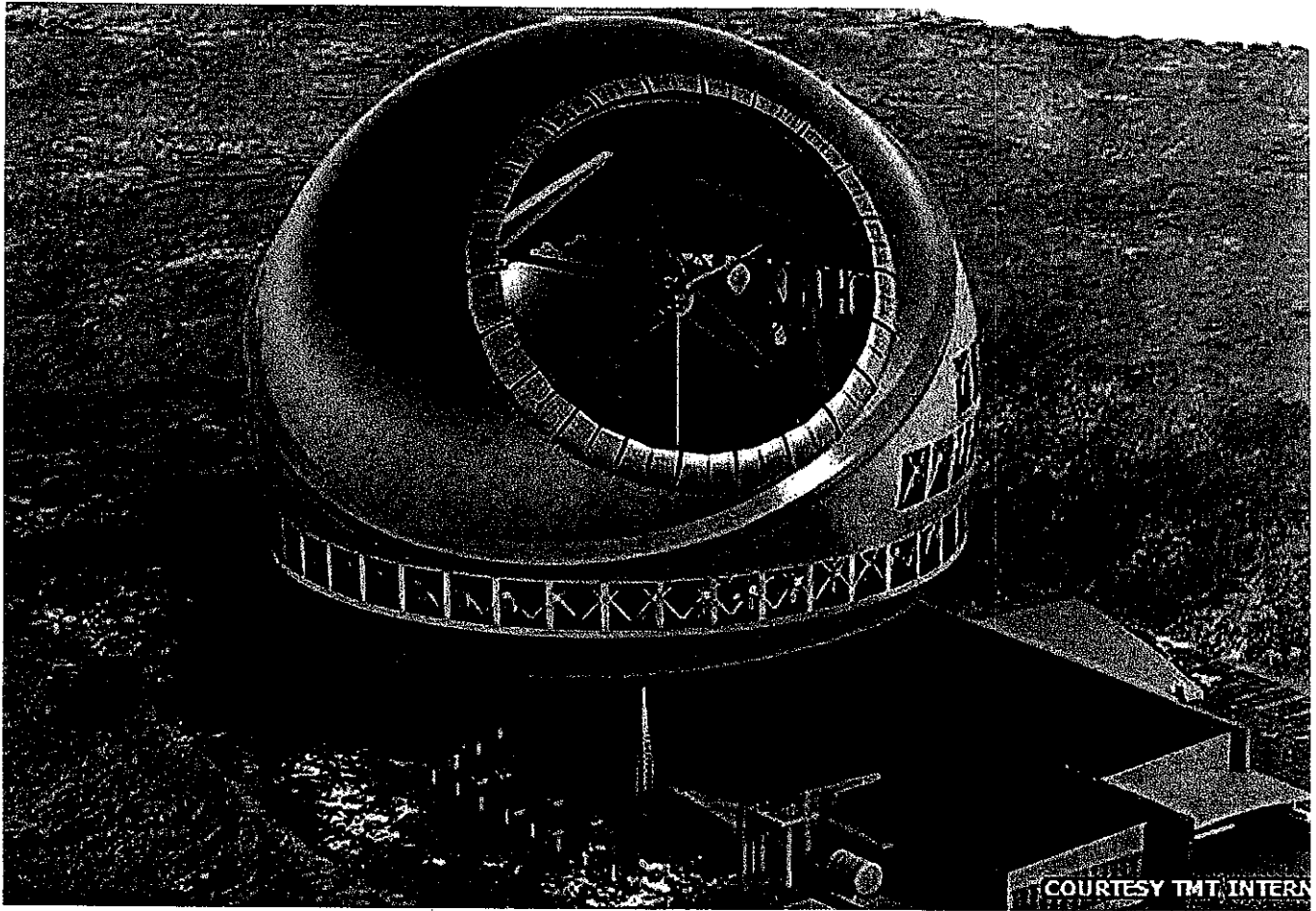
👁️ 27 📷 ⭐ 6 📌 [...]



Protestors have been camped out on the top of the mountain creating a human blockades for two weeks. At the beginning of the month **local news outlets reported** that over 30 people had been arrested.

An **online petition** to halt construction and stop arresting protestors has over 30,000 signatures.

"Our ancestors believed that there were numerous gods and goddesses and Mauna Kea was their temple. They feel strongly that his will disrupt their temple," says protestor Isa Center. "In Hawaii the land is precious to our people. It's a very strong cultural protest."



The 18-storey, \$1.4 bn (£957m) Thirty-Meter Telescope (TMT) project was proposed by the University of Hawaii and is projected to be operational by 2024. Funding for the project has **reportedly** come from the US, Canada, Japan, India and China. The telescope would let scientists see 13 billion light-years away.

Astrophysicists behind the project, like Hawaiian Paul Coleman, say science and the sacred don't have to oppose one another.

"The one thing that makes you Hawaiian is one of your ancestors came here in a canoe led by an astronomer," he told [HawaiiNewsNow](#).

This week the governor of Hawaii temporarily **halted construction** on the telescope, saying it was "a time out" and a chance for both sides to talk.

Blog by [Olivia Crellin](#)

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APPENDIX “B”

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IN THE SUPREME COURT OF THE STATE OF HAWAII

KILAKILA 'O HALEAKALĀ,
Petitioner/Appellant-Appellant,

vs.

BOARD OF LAND AND NATURAL RESOURCES, DEPARTMENT OF LAND AND
NATURAL RESOURCES, WILLIAM AILA, Jr., in his official capacity as
Chairperson of the Board of Land and Natural Resources, and
UNIVERSITY OF HAWAII,
Respondents/Appellees-Appellees.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-13-0003065; CIV. NO. 12-1-3070-12)

ORDER ACCEPTING APPLICATION FOR WRIT OF CERTIORARI

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

Petitioner/Appellant-Appellant Kilakila 'O Haleakalā's
Application for Writ of Certiorari filed on December 1, 2014, is
hereby accepted and will be scheduled for oral argument. The

parties will be notified by the appellate clerk regarding scheduling.

DATED: Honolulu, Hawai'i, January 7, 2015.

David Kimo Frankel and
Sharla Ann Manley
for petitioner

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

Russell Suzuki
William J. Wynhoff and
Linda L.W. Chow
for respondents Board of
Land and Natural Resources,
Department of Land and
Natural Resources, and
William J. Aila, Jr., in
his official capacity as
Chairperson of the Board of
Land and Natural Resources

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



Darolyn H. Lendio
Bruce Y. Matsui
Lisa Woods Munger
Lisa A. Bail and
Christine A. Terada
for respondent University
of Hawai'i at Mānoa

No. SCWC-13-0003065, Thursday, April 2, 2015, 08:45 a.m.

KILAKILA `O HALEAKALĀ, Petitioner/Appellant-Appellant, vs. BOARD OF LAND AND NATURAL RESOURCES, DEPARTMENT OF LAND AND NATURAL RESOURCES, WILLIAM AILA, Jr., in his official capacity as Chairperson of the Board of Land and Natural Resources, and UNIVERSITY OF HAWAII, Respondents/Appellees-Appellees.

The above-captioned case has been set for argument on the merits at:

**Supreme Court Courtroom
Ali`iolani Hale, 2nd Floor
417 South King Street
Honolulu, HI 96813**

Attorneys for Petitioner:

David Kimo Frankel and Sharla Ann Manley

Attorneys for Respondent UH:

Darolyn H. Lendio, Bruce Y. Matsui, Lisa Woods Munger, Lisa A. Bail, Kimberly A. Vossman, and Christine A. Terada

Attorneys for Respondent BLNR, etc.:

Russell Susuki, William J. Wynhoff and Linda L.W. Chow, Deputy Attorneys General

NOTE: Order accepting Application for Writ of Certiorari, filed 01/07/15.

COURT: MER, CJ; PAN, SSM, RWP, and MDW, JJ.

Brief Description:

This appeal concerns a conservation district use permit ("CDUP") that would allow the construction of the Advanced Technology Solar Telescope (ATST) project atop the summit of Haleakala on Maui. In this case, Kilakila `O Haleakala ("Kilakila") challenges the findings of the CDUP that the Board of Land and Natural Resources ("BLNR" or "the Board") approved for the construction of the ATST project.

The BLNR first approved the CDUP on December 1, 2010, notwithstanding Kilakila's requests for a contested case hearing. While

the first CDUP was appealed, the BLNR held a contested case hearing with a hearing officer presiding. Prior to the completion of the hearing officer's report, the hearing officer submitted an ex parte communication to the University of Hawai'i's counsel, stating that he had been subjected to ex parte pressure to complete his report. The Board decided to remove this hearing officer and strike his report from the record. Subsequently, Kilakila filed motions for disclosure of the BLNR's communications regarding the ATST project. The BLNR allowed limited discovery.

The BLNR subsequently approved the second CDUP that is relevant to this case, finding that the CDUP complied with all requirements of Hawai'i Administrative Rules ("HAR") 13-5-30(c). The circuit court affirmed the BLNR's decision and order.

Kilakila appealed to the Intermediate Court of Appeals, which also affirmed the BLNR's decision and order.

Kilakila's timely filed application for writ of certiorari raises several questions:

- 1) Did the ICA err when it held that an agency can use decisionmaking criteria that are not identified in its own rules?
- 2) Is the ATST project consistent with the purposes of the land use law and the conservation district?
- 3) Should the courts take a close look at the record in cases affecting the environment?
- 4) Did the ICA err in concluding that the ATST project would not have substantial impacts to cultural resources?
- 5) Did the ICA err by relying on grounds not invoked by the agency?
- 6) Did the ICA err in interpreting HAR § 13-5-30(c)(6) in a manner that excludes consideration of natural beauty and open space characteristics?
- 7) Did the ICA err in assuming that the lease of a portion of land does not subdivide it despite the plethora of law to the contrary?

8) Did the ICA err in holding that the ATST project is consistent with a valid management plan?

9) Did the BLNR prejudge the issue by granting the CDUP before the contested case was held and then authorizing some construction activities to proceed pursuant to that permit prior to completion of the post hoc contested case hearing?

10) Did the ICA err in relying on HRS § 171-6(20) to justify the BLNR's conduct pursuant to HRS chapter 183C when chapter 183C is not part of HRS chapter 171?

11) Was the BLNR's post hoc contested case hearing tainted by political pressure, ex parte communication, the refusal to fully and timely disclose the extent of ex parte communication, the dual role of the deputy attorney general as adversary and advisor to the tribunal, and the arbitrary deletion of key findings by the hearing officer?

12) Did the ICA err in holding that the applicant was authorized to apply for the permit?

In response, UH and BLNR argue that the BLNR's findings were not clearly erroneous and complied with the requirements of HAR 13-5-30(c), and ask this court to affirm the ICA and circuit court.

IN THE SUPREME COURT OF THE STATE OF HAWAII

MAUNA KEA ANAINA HOU;	)	CIVIL NO. 13-1-0349
CLARENCE KUKAUAKAHI CHING;	)	(Agency Appeal)
FLORES-CASE 'OHANA; DEBORAH J.	)	
WARD; PAUL K. NEVES; and KAHEA:	)	APPEAL FROM:
THE HAWAIIAN ENVIRONMENTAL	)	
ALLIANCE, a domestic non-profit	)	1) FINAL JUDGMENT FILED ON
corporation,	)	MAY 5, 2014
	)	
Petitioners-Appellants-Appellants,	)	2) DECISION AND ORDER
	)	AFFIRMING BOARD OF LAND AND
vs.	)	NATURAL RESOURCES, STATE OF
	)	HAWAII'S FINDINGS OF FACT,
BOARD OF LAND AND NATURAL	)	CONCLUSIONS OF LAW AND
RESOURCES, STATE OF HAWAII;	)	DECISION AND ORDER GRANTING
DEPARTMENT OF LAND AND	)	CONSERVATION DISTRICT USE
NATURAL RESOURCES, STATE OF	)	PERMIT FOR THE THIRTY METER
HAWAII; WILLIAM J. AILA, Jr., in his	)	TELESCOPE AT THE MAUNA KEA
official capacity as Chair of the Board of	)	SCIENCE RESERVE DATED APRIL
Land and Natural Resources and Director	)	12, 2013, FILED ON MAY 5, 2014
of the Department of Land and Natural	)	
Resources; and the UNIVERSITY OF	)	THIRD CIRCUIT COURT
HAWAII AT HILO,	)	
	)	HONORABLE GREG K. NAKAMURA
Respondents-Appellees-Appellees.	)	Judge
	)	
	)	
	)	
	)	
	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below, a true and correct copy of the foregoing document was served on the following VIA JEFS:

Ian L. Sandison, Esq.
Jay S. Handlin, Esq.
Carlsmith Ball, LLP
1001 Bishop Street, Suite 2100
Honolulu, HI 96813

Attorneys for Appellee-Appellee University of Hawaii at Hilo

Julie H. China, Esq.
Department of the Attorney General
State of Hawaii
465 S. King Street, Room 300
Honolulu, HI 96813

Attorney for Appellees Board of Land and Natural Resources, Department of
Land and Natural Resources, and William J. Aila, Jr., in his official capacity

DATED: Honolulu, Hawaii, May 10, 2015.

/s/ Richard Naiwieha Wurdeman
RICHARD NAIWIEHA WURDEMAN
Attorney for Petitioners-Appellants-
Appellants
MAUNA KEA ANAINA HOU and
KEALOHA PISCIOTTA; CLARENCE
KUKAUAKAHI CHING; FLORES-CASE
OHANA; DEBORAH J. WARD; PAUL K.
NEVES; and KAHEA: THE HAWAIIAN
ENVIRONMENTAL ALLIANCE, a
domestic non-profit corporation