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October 18, 2019

Mr. Jonathan Scheuer, Chair
and Commissioners
Land Use Commission
State of Hawai'i
Department of Business, Economic Development & Tourism
P. O. Box 2359
Honolulu, Hawai'i 96804-2359

RE: Office of Planning's Comments on
Petition for Declaratory Order; LUC Docket No. DR19-67;
Ku'ulei Higashi Kanahele and Ahiena Kanahele
TMK No. 4-4-015:009 (por.)

Dear Chair Scheuer and Commissioners:

This is in response to the Petition for Declaratory Orders ("Petitioner") filed by Ku'ulei Higashi Kanahele and Ahiena Kanahele ("Petitioners") on September 3, 2019. The Petition asks the Land Use Commission ("Commission") to determine whether the grant by the Board of Land and Natural Resources ("BLNR") of a Conservation District Use Permit ("CDUP") pursuant to Hawaii Revised Statutes ("HRS") Chapter 183C, allowing the construction of the Thirty Meter Telescope ("TMT") is an appropriate action within the State Conservation District.

The State of Hawaii Office of Planning ("OP") represents the State in all boundary amendment petitions and proceedings before the Commission, assists State agencies in providing comments and recommendations to the Commission, and conducts periodic reviews of the classification and districting of all lands in the State.

OP recognizes the strongly held views by all sides regarding TMT. Ultimately, however, Hawaii Administrative Rules ("HAR") § 15-15-100(a)(1) requires that the Petition be denied either because the Petition requires a ruling on a statutory provision not administered by the Commission or because the issuance of a declaratory order may adversely affect the interest of the State in litigation that reasonably may be expected to arise.

If, however, the Commission intends to issue a decision, then the Commission should either find that astronomy facilities could be a permissible use within the Conservation District, or find that TMT is an appropriate use within the Conservation District because it met all requirements as found by the BLNR and upheld by the Hawaii Supreme Court.

I. BACKGROUND

A. Procedural Background of the TMT and the Issues Presented by Petitioners.

The University of Hawaii at Hilo ("University") submitted an Application for a CDUP for the TMT on September 2, 2010. On December 2 and 3, 2010, the BLNR held public hearings on the CDUP Application in Hilo and Kailua-Kona, respectively. On February 25, 2011, the BLNR voted to grant the TMT-CDUP and to hold a contested case on the TMT-CDUP. Mauna Kea Hui filed petitions for a contested case on the TMT-CDUP. The BLNR held contested case hearings on TMT-CDUP from August through September 2011. The BLNR granted the TMT-CDUP on April 12, 2013.

On December 2, 2015, the Hawaii Supreme Court vacated the TMT-CDUP, and remanded for a contested case hearing. *Mauna Kea Anaina Hou v. Bd. Of Land & Nat. Res., 136 Hawaii 376, 363 P.3d 224 (2015)*. On remand, a contested case hearing was conducted over forty-four days. The hearing officer issued "Proposed Findings of Fact, Conclusions of Law, and Decision and Order" on July 26, 2017. On September 27, 2017, the BLNR issued its 271-paged Findings of Fact, Conclusions of Law and Decision and Order containing 1,070 Findings of Fact and 512 Conclusions of Law ("D&O").

Here are some of the summarized key findings of the D&O:

- The TMT will not pollute groundwater, will not damage any historic sites, will not harm rare plants or animals, will not release toxic materials, and will not otherwise harm the environment. It will not significantly change the appearance of the summit of Mauna Kea from populated areas on Hawai'i Island.

- The TMT site and its vicinity were not used for traditional and customary native Hawaiian practices conducted elsewhere on Mauna Kea, such as depositing piko, quarrying rock for adzes, pilgrimages, collecting water from Lake Waiau, or burials. The site is not on the summit ridge, which is more visible, and, according to most evidence presented, more culturally important than the plateau 500 feet lower where TMT will be built.

- Some groups perform ceremonies near the summit. The evidence shows that these ceremonies began after the summit access road and first telescopes were built, but, in any case, the TMT will not interfere with them.

- Some native Hawaiians expressed that Mauna Kea is so sacred that the very idea of a large structure is offensive. But there are already twelve observatories on Mauna

Kea, some of them almost as large as the TMT. They will remain even if the TMT is not built. No credible evidence was presented that the TMT would somehow be worse from a spiritual or cultural point of view than the other large observatories. Each observatory received a permit after a process allowing public participation and judicial review, over a period spanning three decades.

- After a worldwide search, scientists found that Mauna Kea is the best site on earth for the most advanced telescope ever built. Mauna Kea will forever be known throughout the world as the site of profound discoveries about the universe. These witnesses see TMT and the other telescopes, not as objects spoiling the landscape, but as portals to discovery placed in this site made ideal for them.

- TMT will contribute $1 million a year toward education, and has signed a sublease agreement committing $300,000/yr. at first, increasing to $1 million/yr., for conservation on Mauna Kea. No existing observatory makes any such contributions.

- Astronomy directly supports about 1,000 jobs in Hawai'i. TMT will employ about 140 people.

- The decision contains 43 special conditions to ensure that the project lives up to its environmental commitments, that the educational fund will help the underserved members of the community, that TMT will train and hire local workers, and that the native Hawaiian cultural presence at Hale Pōhaku will be enhanced.

On October 30, 2018, the Hawaii Supreme Court affirmed the TMT-CDUP. In June 2019, the State issued a "notice to proceed" with the TMT project.

On September 3, 2019, Petitioners filed the subject Petition for Declaratory Orders requesting the Commission to determine that:

(1) Pursuant to HRS § 205-2(b), the current astronomy facilities are appropriate for the Urban District, but not the Conservation District;

(2) Before future astronomy facilities are constructed, such as the TMT, the area must first be reclassified to Urban through a district boundary amendment proceeding; and

(3) Even if a single astronomy facility may be appropriate within the Conservation District, multiple astronomy facilities are an urban use inconsistent with the

concept of a multi-use Conservation District, and a district boundary amendment is required.

B. <u>The State Land Use System</u>.

The Hawaii State Land Use System was established in 1961 with the stated intent to "preserve, protect, and encourage the development of the lands in the State for those uses to which they are best suited for the public welfare[.]" *Act 187, § 1, Session Laws of Hawaii 1961.* The System established three districts: Urban, Agricultural, and Conservation. The Rural District was added in 1963 to accommodate small rural landowners. The three major districts comprise 99.7% of the lands in the State and are broadly defined as follows:

- Urban Districts: lands in urban use with sufficient reserve areas to accommodate foreseeable growth, characterized by city-like concentrations of people, structures, streets, and other related land uses. Uses and zoning within the Urban District (5.0% of lands in the State) are under the sole jurisdiction of the counties. *HRS § 205-5(a).*

- Agricultural Districts: lands with a high capacity for intensive cultivation, characterized by cultivation of crops, orchards, forage, and forestry, animal husbandry and game and fish propagation. The Agricultural District (45.7% of lands in the State) is zoned and enforced by the counties, with policy guidance on uses by the State in HRS Chapter 205.

- Conservation Districts: areas necessary for protecting watersheds and water sources, preserving scenic areas, providing park lands, wilderness and beach reserves, conserving endemic plants, fish and wildlife, preventing floods and soil erosion; forestry and related activities. Uses and zoning in the Conservation District (49.0% of lands in the State) are under the sole jurisdiction of the Department of Land and Natural Resources. *HRS § 205-5(a).*

The State land use districts are neither definitive nor mutually exclusive zones. In the Agricultural District, there is a range of permissible uses, including farm dwellings, recreational facilities, wind and solar energy facilities, biofuel processing, geothermal and hydroelectric generation facilities. "Unusual and reasonable" uses other than those for which the district is classified may be permitted by the county through a Special Permit.

In the Conservation District, lands are classified into Protective, Limited, Resource, General and Special subzones, with departmental or BLNR permits required for various land uses. *HAR Chapter 13-5.* Agricultural uses, and renewable energy facilities such as hydropower, wind farms, solar farms, geothermal, biomass are allowed with a BLNR permit and

management plan. In the Resource subzone, astronomy facilities are allowed with a BLNR permit and management plan. Special subzones have also been established for urban-type uses such as a university and nursing home. All uses are first determined by the BLNR to be consistent with purposes of the Conservation District.

On the Island of Hawaii, the Conservation District is approximately half (1,304,347 acres) of the total acreage of the Island. Mauna Kea, its summit, flanks, and base, all under the management and ownership of the BLNR, covers approximately 74,000 acres. The Astronomy Precinct, which includes the TMT, the currently existing telescopes, and the spaces in between, is 525 acres. The TMT footprint, including the observatory dome, supporting building, parking area, and area disturbed during construction will cover roughly five (5) acres.

II. ARGUMENT

A. The Commission Should Deny this Petition.

The Commission is required to deny this Petition pursuant to Hawaii Administrative Rules ("HAR") § 15-15-100(a)(1)(C) and D which states in pertinent part as follows:

> The commission… shall:
>
> (1) Deny the petition where:
>
> * * *
>
> (C) The issuance of the declaratory order may adversely affect the interest of the State, the commission, or any of the officers or employees in any litigation which is pending or may be reasonably expected to arise; or
>
> (D) The petitioner requests a ruling on a statutory provision not administered by the commission or the matter is not otherwise within the jurisdiction of the commission;

Accordingly, the Commission should deny the Petition because (1) the Petition requires the consideration and interpretation of HRS Chapter 183C and HAR Chapter 15-15-26, which are statutes and rules not administered by the Commission; and (2) the Petition requires the Commission to determine the correctness of the BLNR's decision to grant the CDUP, which is a matter outside of the jurisdiction of the Commission. Therefore, the Petition should be denied

pursuant to HAR § 15-15-100(1)(a)(D). In addition, the Commission should deny the Petition because a declaratory order is reasonably likely to be used to sue the State in an effort to prevent the construction of TMT and to require the dismantling of existing astronomy facilities on both the Big Island and Maui. As such, the Petition should be denied pursuant to HAR § 15-15-100(1)(a)(C).

1. The Petition Requires the Commission to Consider Statutes and Rules not Administered by the Commission.

The Petition asks that the Commission determine that the current and proposed uses on Mauna Kea are not consistent with the uses of the Conservation District. But these are matters that are governed by and subject to statutory and rule provisions administered by the BLNR, not this Commission.

HAR § 15-15-100(1)(D) implements HRS § 91-8 of the Hawaii Administrative Procedure Act, which states in part, "Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency." *HRS § 91-8. (Emphasis added.)* In *Fasi v. State Public Employment Relations Bd., 60 Haw. 436, 591 P.2d 113 (1979)*, the Hawaii Supreme Court recognized that, "In order to fall within the scope of [section] 91-8, the question presented by the petition had to relate to a statutory provision or rule or order of the Board. The words 'statutory provision' are limited by their context, and do not embrace every provision of the statute laws of the state. We think it is fairly implied, from the provision of [section] 91-8... that the question presented by the petition had to be one which would be relevant to some action which the Board might take in the exercise of the powers granted [to it by statute]." *Fasi v. State Public Employment Relations Bd., 60 Haw. 436, 443, 591 P.2d 113, 117.*

HRS § 205-5(a) plainly states that "Conservation districts shall be governed by the department of land and natural resources pursuant to chapter 183C." Consistent with this statutory provision, HAR § 15-15-26 states that "Uses of land within a conservation district shall be governed by the rules of the state department of land and natural resources." Furthermore, HRS § 205-15 makes clear that except as specifically provided, the authority for the administration of HRS Chapter 183C is not affected by HRS Chapter 205. Chapter 205, HRS, thus delegates authority over the Conservation District to the BLNR.

HRS § 183C-3 authorizes the BLNR to "identify and appropriately zone those lands classified within the conservation district," "establish categories of uses or activities on conservation lands, including allowable uses or activities for which no permit shall be required," "establish restrictions, requirements, and conditions consistent with the standards set forth in this chapter [183C] on the use of conservation lands," and "establish and enforce land use regulations

on conservation district lands including the collection of fines for violations of land use and terms and conditions of permits issued by the department." *HRS § 183C-3.*

The Petition attempts to phrase the issue as an interpretation of HRS § 205-2(e). But the determination of whether astronomy facilities are "other permitted uses not detrimental to a multiple use conservation concept" as allowed by § 205-2(e) necessarily requires the consideration of HRS Chapter 183C, and the related administrative rules. Accordingly, the Petition cannot be answered without an interpretation of statutory provisions not administered by the Commission. As such, the Petition must be denied.

2. The Petition Requires the Commission to Rule upon the Correctness of the Decision of the BLNR, a Matter Outside of the Commission's Jurisdiction.

The BLNR, not the Commission, is statutorily authorized to identify Conservation District zones, establish categories of uses and activities, establish restrictions, requirements and conditions, and enforce land use regulations in the Conservation District. As discussed above, the BLNR did so and held forty-four (44) days of evidentiary hearings, and issued a 271-paged Findings of Fact, Conclusions of Law and Decision and Order containing 1,070 Findings of Fact and 512 Conclusions of Law. BLNR's decision was appealed to and upheld by the Hawaii Supreme Court. This was the correct means to challenge decisions by the BLNR.

Although couched as a petition for declaratory order, by challenging whether astronomy facilities, including the TMT, may be built in the Conservation District, the Petition necessarily asks the Commission to rule upon the correctness of the BLNR decision. Petitioners had an opportunity to participate in the BLNR process. In fact, Petitioner Ku'ulei Higashi Kanahele, provided written and oral testimony as to the sacredness of Mauna Kea at the TMT-CDUP contested case hearing on January 24, 2017.

But jurisdiction over appeals of BLNR decisions is held by the judiciary, not the Commission, much less through the Commission's declaratory order process. *See HRS §§ 183C-8 and 183C-9, as applicable.* The decision and appeal have been made. It is not within the Commission's jurisdiction to provide another avenue of redress. Accordingly, the Petition should be denied as it constitutes a decision outside the Commission's jurisdiction. *See HAR § 15-15-100(a)(1)(D).*

The Petitioner has also raised public trust arguments, particularly insofar as it relates to native Hawaiian rights, in its written public testimony. As found in Kuleana Ku'ikahi, Docket No. DR 04-30, the Commission's jurisdiction to consider native Hawaiian rights and public trust issues is limited to matters under chapter 205. As discussed above, the Commission does not

have jurisdiction over this matter. Considerations of public trust and native Hawaiian rights were within the jurisdiction of BLNR, and were considered by BLNR in its Findings of Fact 1058 through 1070, and Conclusions of Law 1, and 322 through 368. The Hawaii Supreme Court also affirmed the determination that there was no public trust violation, particularly insofar as it related to native Hawaiian rights. In re Conservation District Use Application HA 3568, 143 Hawai'i at 400-402. Consequently, a determination on this issue was made and affirmed by the state agency with jurisdiction over this matter, and there is no jurisdiction in the Commission to overrule that decision.

3. The Issuance of a Declaratory Order Would Adversely Affect the Interests of the State in Litigation that may be Reasonably Expected to Arise.

Even if the Petition were within the Commission's jurisdiction, the Commission by rule has already decided not to answer questions which are likely to be the basis of future litigation with the State. This is not merely a discretionary choice. The rules state that the Commission "shall" deny the petition. It is, therefore, a mandatory requirement that the Commission has chosen to impose upon itself by rule. As rules have the force and effect of law, the Commission can only supersede this rule through rulemaking. *State v. Kotis, 91 Hawaii 319, 331, 984 P.2d 78, 90 (1999).*

The Petition asks the Commission to determine that the current telescopes and/or TMT were permitted inconsistent with HRS Chapter 205. Such a determination would create a basis for future litigation against the State to invalidate the entitlements to the existing telescopes and rights to proceed with construction of the TMT. Given the history of litigation over both TMT and the telescopes on Haleakala, litigation must be admitted to-be reasonably expected. The Commission should not get involved, and by rule must deny this Petition.

B. The Current and Proposed Uses in the Conservation District on Mauna Kea are Consistent with HRS Chapter 205.

Although the Commission's rules require that the Petition be denied, we nevertheless address the substantive question as to whether astronomy facilities may be built in the Conservation District.

1. The BLNR is Authorized to, and has Properly Determined that, the Current Uses and TMT are Permitted Uses in the Conservation District.

Petitioners argue that the current telescopes and TMT are not consistent with HRS § 205-2(e) as Conservation District uses. However, consistency with HRS § 205-2(e) is incorporated within the CDUP permitting process as established by statutes and administrative rules. Under HAR § 13-5-30(c), there are eight criteria for evaluating the merits of a proposed use consistent with the Conservation District. For the subject TMT CDUP, therefore, the BLNR determined that under the particular facts and circumstances of this case, the existing telescopes and the TMT are consistent with HRS § 205-2(e).

By statute and administrative rule, the BLNR is authorized to govern the uses in the Conservation District. *HRS § 205-5(a) and HAR §15-15-26.* The BLNR holds specific authorities to further define, interpret, and implement the definition and categories of uses of HRS § 205-2(e), including: "establish[ing] categories of uses or activities on conservation lands"; "establish[ing] restrictions, requirements, and conditions consistent with the standards set forth in this chapter [183C] on the use of conservation lands"; and "adopt[ing] rules in compliance with Chapter 91 which shall have the force and effect of law." *HRS § 183C-3.* The BLNR also has the authority to regulate land uses in the Conservation District through the issuance of discretionary permits. *HRS § 183C-6.*

In 1994, the BLNR adopted Conservation District rules under HAR Chapter 13-5, that incorporate and implement the provisions of HRS § 205-2(e). Specifically under HAR § 13-5-30(c), the following eight criteria are required for evaluating the merits of a proposed use in the Conservation District:

(1) The proposed land use is consistent with the purpose of the conservation district;
(2) The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur;
(3) The proposed land use complies with provisions and guidelines contained in chapter 205A, HRS, entitled "Coastal Zone Management", where applicable;
(4) The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region;
(5) The proposed land use, including buildings, structures, and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels;
(6) The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable;

(7) Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and
(8) The proposed land use will not be materially detrimental to the public health, safety, and welfare.

HAR § 13-5-30(c).

The incorporation and implementation of HRS § 205-2(e) into HAR § 13-5-30(c) is demonstrated as follows.

HAR § 13-5-30(c) plainly requires as the first of the eight criteria that "[t]he proposed land use is consistent with the purpose of the conservation district."

As HRS § 205-2(e) states that "Conservation districts shall include… other permitted uses not detrimental to a multiple use conservation concept," HAR § 13-5-30(c) requires that "The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region."

As HRS § 205-2(e) states that "Conservation districts shall include… open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources," HAR § 13-5-30(c) requires that "The proposed land use, including buildings, structures, and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels," and "The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable."

The University demonstrated by a preponderance of the evidence that the TMT Project met the eight criteria of HAR § 13-5-30(c) to support a recommendation of approval of the CDUA and issuance of a CDUP. *HAR § 13-1-35(k).* The BLNR determined that the TMT satisfied the eight criteria of HAR § 13-5-30(c), and the Hawaii Supreme Court upheld the granting of the CDUP in *Mauna Kea Anaina Hou*. Therefore, the TMT was determined to be consistent with HRS § 205-2(e) Conservation District uses.

The BLNR considered Petitioners' specific allegations that the existing telescopes and TMT "obstruct areas and open space," and are "incompatible with the serene use and enjoyment of the summit's open spaces" when it applied the eight criteria of HAR § 13-5-30(c). The Petitioners simply disagree with the BLNR's determination that the existing telescopes and TMT are uses consistent with HRS section 205-2(e).

For the existing telescopes that were approved prior to 1994, criteria similar to HAR § 13-5-30(c) were applied in the approval process. These criteria corresponded to the Land Use Commission statute at the time (Act 206 of 1963) that provided,

> Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic areas: providing park lands, wilderness and beach reserves; conserving endemic plants, fish and wildlife; preventing floods and soil erosion; forestry; and other related activities; and other permitted uses not detrimental to a multiple use conservation concept.

The 1964 Regulation No. 4, "A Regulation of the Department of Land and Natural Resources, State of Hawaii, Providing for Subzones, Uses, Appeals, Enforcement and Penalty," interpreted and implemented the statute to require that proposed uses in the Conservation District be subject to the following "conditions": "the use shall be compatible with the locality and surrounding areas, and appropriate to the physical conditions and capabilities of the specific parcel of lands," "the existing physical and environmental aspects of the subject area, such as natural beauty, open space characteristics, etc., shall be preserved or improved, whichever is applicable", and "buildings, structures and facilities shall harmonize with the physical and environmental conditions." The 1981 Title 13 Chapter 2 "Conservation District" regulations similarly interpreted and implemented the 1980 Land Use Commission Statute for the existing telescopes approved from 1981 to 1994.

Based on the foregoing, through the application of administrative rules and regulations that incorporate and implement HRS § 205-2(e) and its earlier versions, the current telescopes and TMT were determined by the BLNR to be consistent with HRS § 205-2(e) as Conservation District uses, and thus do not require a district boundary amendment to the Urban District.

2. Conservation District uses and Urban District uses are not exclusive of each other.

Petitioners assert that (1) the current uses in the Conservation District on Mauna Kea are Urban uses rather than Conservation District uses; (2) the TMT along with the current uses require a district boundary amendment from the Conservation District to the Urban District; and (3) the successive approvals of the thirteen existing telescopes and related facilities are inconsistent with the Conservation District.

The basic premise for Petitioners' assertions is flawed. Petitioners mistakenly assume that uses in the Conservation District are completely distinctive and exclusive from uses in the

Urban District. In fact, the Conservation District may allow a wide range of uses, including "urban"- type uses, so long as they meet the requirements of HRS Chapter 183C and its associated rules, which include the requirements of HRS § 205-2(e) that the use not be "detrimental to a multiple use conservation concept." Within the Conservation District, there are dwellings, highways, geothermal and renewable energy facilities, a university campus, nursing home, and a marine mammal park and aquarium. There is no statutory prohibition against urban-type uses in the Conservation District, or requirement that urban-type uses be limited solely to the Urban District.

Petitioner's characterization of the astronomy facilities as industrial uses is simply a pejorative description. The appropriateness of the use depends upon the specifics facts and circumstances of the particular facility.

3. The BLNR's successive approval of the thirteen existing telescopes does not constitute uses inconsistent with the Conservation District for which a boundary amendment must be obtained.

Petitioner also argues that even if a single astronomy facility is allowed, multiple astronomy facilities are not. Although the thirteen existing telescopes were approved individually, each was not evaluated in isolation from those already approved. The permitting process under the administrative rules requires assessment of a proposed use in its physical context and in relation to existing proximate uses. A comprehensive EIS was prepared for the TMT project in conformance with HRS Chapter 343 requirements, including an assessment of cumulative impacts.

Astronomy facilities, which include telescopes, are an identified use in the resource subzone. *HAR § 13-5-24(c)*. Astronomy facilities require a management plan approved simultaneously with the CDUP. *HAR § 13-5-24(c)*. A management plan is required by the BLNR where it specifically finds that "further development may lead to significant natural, cultural, or ecological impacts within the conservation district." *HAR § 13-5-24(c)*. The management plan must include a "natural resources assessment including descriptive information about the natural resources in the project vicinity such as biological, archaeological, cultural, geological, coastal, recreational, and scenic resources, where applicable, as well as a "description of existing uses and facilities, if any." *Exhibit 3 of HAR Chapter 13-5.*

The criteria for approval of HAR § 13-5-30(c) requires that "the proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels."

The BLNR's assessment of individually proposed uses in the Conservation District includes the consideration of resources and existing uses and facilities in the vicinity of the proposed use, and evaluation that such use is compatible and appropriate with those uses. In fact, the establishment of the Astronomy Precinct and management plan demonstrates that the BLNR considered and planned for how multiple astronomy facilities can be made consistent with a multi-use Conservation District. Therefore, the successive approvals of uses in the Conservation District were determined to be consistent with the Conservation District, and do not require a district boundary amendment to the Urban District.

III. CONCLUSION

The Commission is required to deny this Petition pursuant to HAR § 15-15-100(a). Should it disregard HAR § 15-15-100(a) and determine Petitioners' request for declaratory orders, based on the foregoing, the Commission should rule the following:

1. The current astronomy uses are permissible within the Conservation District as prescribed by HRS § 205-2(e) and HRS Chapter 183C;

2. Further astronomy uses do not require a district boundary amendment to reclassify Conservation District lands to the Urban District; and

3. The successive, individual approval of thirteen astronomy facilities are Conservation District uses for which a district boundary amendment to the Urban District is not necessary.

Thank you for the opportunity to provide comments on this Petition.

Sincerely,

Mary Alice Evans

Mary Alice Evans
Director