

# UNIVERSITY OF HAWAI‘I SYSTEM ANNUAL REPORT



REPORT TO THE 2018 LEGISLATURE

Annual Report on the  
Mauna Kea Lands

HRS §304A-1905

November 2017

## REPORT TO THE HAWAI‘I STATE LEGISLATURE

### HRS §304A-1905 Annual Report on the Maunakea Lands

Pursuant to HRS §304A-1905 (“Mauna Kea Lands; reporting requirements”), the University of Hawai‘i (UH) respectfully submits its report on (1) the status of the Maunakea lands activities; (2) current and pending lease agreements and fees; (3) the status of current and pending administrative rules; (4) income and expenditures of the Maunakea lands special fund established in HRS §304A-2170; and (5) any other issues that may impact the activities on Maunakea.

#### 1. Current and Pending Lease Agreements And Fees

In 1964 the Hawai‘i State Legislature passed concurrent resolution S. C. R. 16 stating that the *“State of Hawaii and its citizenry are most desirous and willing to co-operate and aid in the promotion of our nation’s space program and research to the benefit of the County of Hawaii, the state and the nation.”* It was resolved that the Governor set aside and establish an appropriate area on the summit of Maunakea for the installation and operation of telescope observatory and astronomical activities. In fulfillment of this resolution the Mauna Kea Science Reserve (Science Reserve) was established in 1968 and the Department of Land and Natural Resources (DLNR) and UH entered into an agency-to-agency lease granting UH a lease of the Science Reserve for a term expiring on December 31, 2033. The lease is gratis, a common practice for leases between government agencies and one that supports the goal of benefiting the County of Hawai‘i, the State and the Nation.

In a State-UH effort to establish astronomy as a viable research endeavor and making Hawai‘i a center for astronomical research, the University entered into subleases with 11 organizations for the purpose of operating astronomical observatories. All subleases were approved by the Board of Land and Natural Resources (BLNR) and are co-terminus with the University’s General Lease. Each sublessee is obligated to provide a guaranteed percentage of viewing time to the UH. Viewing time provides invaluable advantages for advancing Hawaii’s only State funded institute of higher education, UH, as a center for excellence in research, including astronomy. UH today is recognized as one of the Nation’s leading astronomical research institutions. At little cost and risk to the State, UH’s recognized center of excellence for astronomical research contributes significantly to the State’s efforts to expand its high technology sector. The economic impact of astronomy in the State in 2012 was \$168 million, with the largest impacts found on Hawai‘i Island and Honolulu, \$91 and \$68 million, respectively. Additional benefits accrue to the State and local communities through opportunities in scientific, professional, technical and administrative employment within the local community.

#### 2. Current and Pending Administrative Rules

Act 132 (SLH 2009), HRS §304A-1903, authorizes the UH to adopt administrative rules pursuant to HRS Chapter 91 to regulate public and commercial activities on Maunakea lands leased or granted in easement to UH. UH is in the process of developing administrative rules

pursuant to principles and policies in the BLNR-approved Mauna Kea Comprehensive Management Plan (CMP) and its public access sub-plan. The public access sub-plan provides guidance to UH in addressing public access on Maunakea lands managed by UH. The plan's objective is to provide a set of principles and policies to serve as a guide in developing administrative rules related to the management of public access.

The administrative rules under development must also be consistent with DLNR rules applicable to lands that are adjacent to the UH managed areas (Public Access Plan, Section 5.1, Guiding Principles). Pursuant to HRS §304A-1903, the development of rules requires consultation with the Office of Hawaiian Affairs (OHA) and DLNR. However, coordination with DLNR on the draft rules was suspended when one of the petitioners in the then-on-going Thirty Meter Telescope (TMT) first contested case proceeding (DLNR File No. HA-11-05) objected to communications with DLNR regarding the draft rules. While UH did not agree that coordination with DLNR staff on the draft rules would constitute a violation of the ex parte communication rule, it was thought more prudent to avoid even the appearance of, or potential for, such communications between the decision maker, BLNR, in the contested case and the project applicant, UH. That contested case finally concluded in April 2013, over two years after the contested case started. Immediately following the conclusion of the contested case, UH requested approval of a new master lease for the Science Reserve and consent to sublease for the TMT project. Both of these matters involved decision making by the BLNR further delaying the rule making process.

The development of rules resumed after a sublease was executed between UH and the TMT project. UH has completed pre-drafting consultation, and has drafted proposed rules for public hearing. Kahu Kū Mauna and the Maunakea Management Board, community advisory groups to the University, both reviewed the draft rules and concurred on moving forward with the rule making process. At the request of the Governor due to efforts to develop a multi-stakeholder management framework, UH has deferred moving the draft rules forward to the Board of Regents and Governor with a request to proceed to public hearing at this time.

### 3. Income and Expenditures of the Maunakea Lands Special Fund (HRS §304A-2170)

During FY 2017, \$361,702 in fees were collected from commercial tour operators, \$148,950 in rent from TMT, and \$289,147 carried over from FY 2016, for a total of \$799,799. The funds collected were deposited into the Maunakea lands special fund. A total of \$614,501 was used to help defray the cost to operate the Maunakea ranger program, Visitor Information Station, road, facility and infrastructure maintenance and enforcement expenses. During FY 2017, \$17,592.40 from revenues collected during the fourth quarter of FY 2016, was designated for payment to OHA. Payments to OHA of \$85,024 were similarly designated for the first three quarters of FY 2017. An amount of \$17,106.40 for FY 2017 fourth quarter was designated for payment in the beginning of FY 2018. In addition, \$65,965.83 was held in reserve as required by UH policy.

### 4. Maunakea Lands Activities and Other Activities

In 2005 the University accepted the transfer of authority from the BLNR for the administration of commercial tour permits. The University currently allows a maximum of eight commercial tour permits, one less than the number allowed by the BLNR. Each commercial tour

operator is charged a fee of \$6.00/tour passenger, which is submitted to the Office of Maunakea Management on a monthly basis. All fees are used to cover management activities on Maunakea. Twenty percent of the fees collected are set aside for payment to OHA. The University has identified unpermitted commercial tour operations and notified those involved to cease their unpermitted activities. Cooperative efforts with other agencies to address unpermitted commercial tour operations are being discussed.

A second contested case on the Conservation District Use Permit (CDUP) application for the TMT project on Maunakea concluded with approval of the application by the BLNR. The contested case involved 25 parties and took over a year to complete. It included 44 days of testimony involving 70 witnesses. Over 800 exhibits were filed. The process to obtain the CDUP approval took seven years from initial submission of the permit application in 2010, through one contested case, appeals through the judicial system to the Hawai'i Supreme Court, and a second contested case.

The most recent BLNR decision was appealed by various project opponents. Pursuant to Act 48 (2016), the appeals were made directly to the Hawai'i Supreme Court, where they are now pending (SCOT Nos. 17-0000705, 17-0000777, 17-0000811 and 17-0000812). Also before the Supreme Court on appeal is the issue of whether or not a contested case was required for consent by the BLNR to the TMT sublease (SCAP No. 17-0000059).

The California Institute of Technology has engaged a consultant for the environmental studies associated with decommissioning of the Caltech Submillimeter Observatory.

Based on developments from 2015 onward, renewed work on the HRS Chapter 343 documents for a new master lease on Maunakea is underway, with a new Environmental Assessment/Environmental Impact Statement Preparation Notice being developed.

The Maunakea Management Board, Kahu Kū Mauna and the Office of Maunakea Management received a Preservation Commendation Award from the Historic Hawai'i Foundation. It is the foundation's highest recognition of preservation, rehabilitation, restoration and interpretation of the State's architectural, archaeological and cultural heritage.

The Office of Maunakea Management also received the 2017 Pūalu Award for Culture and Heritage from the Kona-Kohala Chamber of Commerce. The award recognizes organizations that exhibit through their actions, practices that promote island traditions and preserve our multi-cultural heritage.