

# UNIVERSITY OF HAWAI‘I SYSTEM ANNUAL REPORT



REPORT TO THE 2020 LEGISLATURE

Annual Report on the Mauna Kea Lands

HRS 304A-1905

December 2019

## **Annual Report on the Mauna Kea Lands Legislative Report Pursuant to HRS § 304A-1905**

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 Mauna Kea lands management special fund established in HRS §304A-2170; and (5) any other issues that may impact the activities on the Mauna Kea lands. Consistent with past practice this report covers the fiscal year ending June 30, 2019 (FY19). However, given the events of and since July 17, 2019 (which falls in FY20) matters from FY20 are also included here to provide the Legislature an update on the current status of issues impacting the management of the Mauna Kea lands. Matters applicable to FY20 are noted as such.

### **Current and Pending Lease Agreement 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 cooperate 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.

Also in 1964, then Governor John A. Burns recognized that Hawai‘i has **“some obvious natural advantages in this area of scientific research”** and that Hawai‘i **“must capitalize on these, utilizing all our available resources at the University, in the industrial community and at the levels of State and local government.”** He also emphasized that Hawai‘i is not **“constrained by these physical advantages. We can acquire competence in any field of scientific inquiry. The limitations are only those we impose on ourselves.”** (Honolulu Advertiser, August 7, 1964). Governor Burns understood the demand for manual labor in agriculture would decrease over time and that future jobs would require technicians and scientists. The development of research enterprise would provide jobs of the future. The two areas Governor Burns felt the State should pursue were in the fields of oceanography and astronomy, areas in which the State of Hawai‘i unquestionably excels.

In a State-UH effort to establish astronomy as a viable research endeavor and establish Hawai‘i as 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 Hawai'i's only State-funded institution of higher education, UH, as a center for excellence in research, including astronomy. Today UH is recognized as one of the Nation's leading astronomical research institutions. At little cost and risk to the State, UH is recognized globally as the center of excellence for astronomical research and contributes significantly to the State's efforts to expand its high technology sector. The annual economic impact of astronomy in the State in 2012 was \$168 million, with the largest impacts found on Hawai'i Island and Honolulu, \$91 million 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.

In preparation of seeking a new land authorization, e.g., new master lease from the BLNR beyond 2033, the University is preparing an Environmental Impact Statement (EIS) for UH's managed lands on Maunakea. The EIS will be analyzing impacts from alternative forms of land holdings and parcel configurations, including a request by the Governor that 10,000 acres of the Science Reserve be returned to DLNR, which is part of UH's current managed lands. An EIS Preparation Notice was published in the February 23, 2018, edition of *The Environmental Notice*. Public open houses were held in March 2018 in Hilo, Waimea and Honolulu. A draft of the EIS is currently being developed incorporating public input and comments.

### ***Thirty Meter Telescope (TMT) Sublease***

On April 12, 2013, following a contested case for the TMT project, the BLNR granted the Conservation District Use Application (CDUA) and issued a Conservation District Use Permit (CDUP) that would allow the construction and operation of TMT. On April 9, 2015, BLNR issued its formal written consent for UH to enter into a sublease with the TMT project proponent, TMT International Observatory LLC (TIO).

The BLNR decision on the 2013 CDUP was appealed to the Hawai'i Supreme Court. The Court invalidated the permit and ordered a remand to the BLNR for a contested case hearing before the BLNR or a new hearing officer. On remand, the BLNR appointed a hearing officer who conducted a contested case hearing. 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. On September 27, 2017, the BLNR issued its 271-page Findings of Fact, Conclusions of Law and Decision and Order containing 1070 Findings of Fact and 512 Conclusions of Law, which approved the CDUA and the TMT Management Plan and issued a CDUP.

The BLNR decision on the 2017 CDUP was appealed by various project opponents. Pursuant to Act 48 (2016), the appeals were made directly to the Hawai'i Supreme Court (SCOT Nos. 17-0000705, 17-0000777, 17-0000811 and 17-0000812). On October 30, 2018, the Hawai'i Supreme Court affirmed the BLNR's September 27, 2017, Decision and Order authorizing issuance of a CDUP for the TMT. Also, on

August 18, 2018, the Hawai'i Supreme Court overruled a lower court's order by holding that a contested case hearing regarding whether BLNR should consent to the TIO sublease was not required on the record in this case (SCAP No. 17-0000059).

The process to obtain the CDUP approval took approximately seven years from the initial submission of the permit application in 2010, through two contested cases and several appeals through the judicial system to the Hawai'i Supreme Court.

Unlike the other existing observatory subleases, the TIO sublease provides for rent payments by TIO. Pursuant to TIO's sublease, annual rent payments starting at \$300,000 are phased based on construction activity with the full annual rent of \$1,080,000 to be paid when TIO is operational. To date, \$1,229,041 has been paid. These payments are deposited into the Mauna Kea land management special fund. The TIO sublease is expected to be a model for the other subleases when they are renegotiated upon the issuance of a new land authorization to the University.

### **Current and Pending Administrative Rules**

HRS § 304A-1903 authorizes the UH to adopt administrative rules pursuant to HRS Chapter 91 to regulate public and commercial activities on "Mauna Kea lands," which is defined as

. . . lands that the University of Hawaii is leasing from the board of land and natural resources, including the Mauna Kea Science Reserve, Hale Pohaku, the connecting roadway corridor between Hale Pohaku and the Mauna Kea Science Reserve, and any other lands on Mauna Kea that the University of Hawaii leases or over which the University of Hawaii acquires control or jurisdiction.

HRS § 304A-1903 requires that these rules strive for consistency with DLNR rules applicable to forest reserve and natural area reserve lands that are adjacent to the UH-managed areas. In addition, UH is required to consult with the Office of Hawaiian Affairs (OHA) and DLNR and hold at least one hearing on the Island of Hawai'i. However, coordination with DLNR on the draft rules was suspended when one of the petitioners in the then-on-going 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 BLNR's *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 the TIO 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 completed pre-drafting consultation, and 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 then deferred moving the draft rules forward to the Board of Regents (BOR) and Governor for approval to proceed to public hearings on the draft rules. In January 2018, the Governor gave his permission to resume the rule-making process. UH engaged in additional consultation with OHA and DLNR before submitting the draft rules to the BOR for its review and approval to seek the Governor's approval to hold public hearings.

Public hearings of UH's proposed draft rules were held in September 2018, with two on the Island of Hawai'i, and one each in Honolulu and Maui. Public comments were reviewed and revisions to the rules were drafted based on those comments. The University conducted additional informal consultations with the community on this draft and made additional amendments based on the comments received. The University then held a second round of public hearings in June 2019. The University reviewed testimony and comments received and made appropriate changes. Further action on the rules has occurred in FY20. The rules were presented to the BOR for consideration of approval at its November 6, 2019 meeting. The BOR approved the rules, and they have been submitted to the Governor for final approval.

It is noted that if 10,000 acres of the Science Reserve is returned to DLNR and placed back into the forest reserve and natural area reserve, those lands would be subject to DLNR administrative rules.

### **Income and Expenditures of the Mauna Kea Lands Management Special Fund (HRS § 304A-2170)**

During FY 2019, \$332,598 in fees was collected from commercial tour operators, \$211,928 in rent from the Thirty-Meter Telescope, and \$66,933 carried over from FY 2018, for a total of \$611,459. The funds collected were deposited into the Mauna Kea lands management special fund. A total of \$474,796 was used to help defray the cost to operate the Maunakea ranger program, Visitor Information Station, and road, facility and infrastructure maintenance expenses. During FY 2019, \$17,038 from revenues collected during the fourth quarter of FY 2018, was designated for payment to OHA. Payments to OHA of \$48,110 were similarly designated for the first three quarters of FY 2019. An amount of \$18,410 for FY 2019 fourth quarter was designated for payment in the beginning of FY 2020. In addition, \$26,997 was held in reserve as required by UH policy.

### **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. Due to the closure of the Maunakea access road as a result of protests over the TMT project, commercial tour operations have been unable to access UH-managed lands on the mountain since July 2019 (FY20). This has reduced the fees being collected from the permitted tour operators.

### ***Decommissioning***

Pursuant to the CDUP for the TMT project the BLNR imposed special conditions regarding decommissioning of telescopes on Maunakea, including the following:

The University will decommission three telescopes permanently, as soon as reasonably possible, and no new observatories will be constructed on those sites. This commitment will be legally binding on the University and shall be included in any lease renewal or extension proposed by the University for Mauna Kea.

One of the telescopes identified for decommissioning is the Caltech Submillimeter Observatory (CSO). The California Institute of Technology has engaged a consultant to develop a Chapter 343 Environmental Assessment (EA) for the decommissioning of the CSO. A draft EA is anticipated in early 2020. The University of Hawai'i Hilo's teaching telescope Hōkū Ke'a, is also undergoing decommissioning. The telescope equipment has been removed and a draft environmental site environmental assessment is being prepared. In response to community concerns, due diligence is in progress to locate a new educational telescope for maximum community benefit. The United Kingdom Infrared Telescope (UKIRT) has been identified as the third telescope to be decommissioned and planning scenarios are being developed and discussed with stakeholders. The decommissioning of telescopes will reduce the amount of potential fees to be deposited into the Mauna Kea lands management special fund.

On November 6, 2019 (FY20), the BOR adopted Resolution 19-03, a Resolution to Act on Items Relating to Maunakea Management. Among other things, the resolution calls for a schedule to decommission CSO and Hōkū Ke'a by December 31, 2021, to be presented to the BOR on or before its February 2020 meeting. It also establishes a December 30, 2025 deadline to determine which three additional telescopes will be decommissioned in compliance with existing or future permits or governmental approvals.

### ***Cultural Education***

'Imiloa Astronomy Center, Maunakea Observatory Support Services and the Office of Maunakea Management are working on designing and installing new informational exhibits about the resources on Maunakea, including culture and archaeology, at the Visitor Information Station. These exhibits are intended to help educate and foster

visitor awareness about Maunakea's cultural heritage, natural environment and scientific significance.

***Stewardship Recognition***

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 has also received community recognition from the Kona Kohala Chamber of Commerce with its Environmental Award and Cultural and Heritage Award for Preservation Initiatives. These awards recognize OMKM's sensitivity and concern for the environment through innovative environmental practices, and promoting island traditions and preserving our multi-cultural heritage through actions and practices, respectively.