

UNIVERSITY OF HAWAI‘I SYSTEM ANNUAL REPORT



REPORT TO THE 2019 LEGISLATURE

Annual Report on the Mauna Kea Lands

HRS 304A-1905

December 2018

**Annual Report on the Mauna Kea Lands
Legislative Reports
HRS 304-1905**

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 Maunakea.

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 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.

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 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 Hawai‘i’s only State-funded institute 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 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, which is part of UH's current managed lands, be returned to DLNR. An EIS Preparation Notice was published in the February 23, 2018 *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

In July 2014, following a contested case for the TMT project, the BLNR approved the Conservation District Use Permit (CDUP) that would allow the construction and operation of TMT, and gave its consent for the University to enter into the *Sublease and Non-Exclusive Easement Agreement* dated July 28, 2014 (Sublease), with the project proponent, TMT International Observatory LLC (TIO).

The BLNR decision on the CDUP was appealed to the Hawai'i Supreme Court which subsequently vacated the project's permit. A second contested case on the CDUP was held and concluded with the 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 (SCOT Nos. 17-0000705, 17-0000777, 17-0000811 and 17-0000812). On October 30, 2018, the Hawai'i Supreme Court affirmed the granting of the CDUP by the BLNR. Also, on August 18, 2018, the Hawai'i Supreme Court reversed a lower court's ruling that the BLNR was required to conduct a contested case before consenting to the Sublease (SCAP No. 17-0000059).

Unlike the other existing observatory subleases, the Sublease provides for rent payments by TIO. 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 Maunakea lands leased or granted in easement to UH. These rules must be consistent with DLNR rules applicable to forest reserve and natural area reserve lands that are adjacent to the UH-managed areas. In developing the rules UH is required to consult 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 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 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 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 proceed with 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 are currently being drafted based on those comments. The University plans to hold another round of public hearings on its revised proposed rules in the Spring of 2019.

It is noted that if 10,000 acres of the Science Reserve is returned to DLNR those lands shall be subject to DLNR administrative rules.

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

During FY 2018, \$385,552 in fees was collected from commercial tour operators, and \$83,072 carried over from FY 2017, for a total of \$468,625. The funds collected were deposited into the Mauna Kea lands management special fund. A total of \$325,000 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 2018, \$17,106.40 from revenues collected during the fourth quarter of FY 2017, was designated for payment to OHA. Payments to OHA of \$60,072 were similarly designated for the first three quarters of FY 2018. An amount of \$17,038 for FY 2018 fourth quarter was designated for payment in the beginning of FY 2019. In addition, \$19,278 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.

The University has identified unpermitted commercial tour operations and notified those involved to cease their unpermitted activities. The Office of Maunakea Management works with DLNR on controlling unpermitted commercial tour operations on Maunakea. On January 26, 2018, the BLNR fined two commercial tour operators for conducting unpermitted commercial tours on Forest Reserve lands adjacent to UH-managed land on Maunakea. Information and observations were provided to the BLNR by the Office of Maunakea Management's rangers.

Decommissioning

The CDUP for the TMT project includes 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 for the decommissioning of the CSO. Hoku Kea has been identified as another telescope, and due diligence is in progress to see if UH can relocate the 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.

Cultural Education

'Imiloa, Maunakea Observatory Support Services and the Office of Maunakea Management are working on designing and installing informational exhibits about the resources 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 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.