



STATE PROCUREMENT OFFICE
EMERGENCY PROCUREMENT

TO: Chief Procurement Officer

FROM: Procurement Services Program
Name of Requesting Department

Pursuant to HRS § 103D-307 and HAR chapter 3-122, Subchapter 10, the Department requests approval for the following:

1. Date or period of Emergency: July 12, 2019 to December 31, 2019
2. After-the-Fact: [X] Yes [] No

3. Describe in detail the emergency situation that created a threat to life, public health, welfare or safety. See Attachments 1,2, 3 and 4. In 2017, OHA filed a lawsuit against the State and UH for their decades-long pattern of mismanagement of Maunakea (i.e., poor management resulting in public safety and health issues, including fatalities). On July 12, 2019, members of the Native Hawaiian community established Pu'uhonua o Pu'uhuluhulu at the base of Maunakea to provide for the safety of Native Hawaiians exercising their right to engage in Native Hawaiian traditional and customary practices and expressing their opposition to the state and UH's failure to properly manage the mountain. Since then, thousands of Native Hawaiians, including keiki and kūpuna, have gathered at the Pu'uhonua. On July 12, 2019, OHA Chair Colette Machado and OHA Trustee Dan Ahuna sent a letter to Gov. David Ige demanding the halt to all planned construction activities for the TMT to avoid harm to Native Hawaiians and others steps are taken to ensure public safety.

4. Vendor/Contractor/Service Provider Name: Hawai'i John's Inc.
5. Amount of Request: \$ 45,000.00

6. Describe in detail the emergency goods, services, or construction and explain why it is necessary. Porta potties with daily services have already been transported and being used on Maunakea. Due to the remoteness to access the Pu'uhonua O Puuhuluhulu and the thousands of beneficiaries already at Maunakea, public health and safety for sanitary conditions are imperative. As such the need for the porta potties with daily services cannot be met through normal procurement methods and we must preserve and protect the irreplaceable place on Maunakea and assure for the health and safety of all beneficiaries on and at Pu'uhonua O Puuhuluhulu, Maunakea .

7. State the reason(s) the vendor/contractor/service provider was selected. Explain what competition, as is practicable, was conducted. The vendor transported the porta potties and providing services to Pu'uhonua O Puuhuluhulu, when the need arised. Pu'uhonua O Puuhuluhulu is not an easily accessible location and therefore it is not practicable to conduct a normal procurement method and still provide for public health and safety for thousands of beneficiaries.

8. Identify the primary responsible staff person(s) conducting and managing this procurement. (Appropriate delegated procurement authority and completion of mandatory training required.)

*Point of contact (Place asterisk after name of person to contact for additional information.)

<u>Name</u>	<u>Division/Agency</u>	<u>Phone Number</u>	<u>E-mail Address</u>

All requirements/approvals and internal controls for this expenditure is the responsibility of the department. I certify that the information provided is to the best of my knowledge, true and correct.

Department Head Signature

8/6/19

Date

For Chief Procurement Officer Use Only

Chief Procurement Officer (CPO) Comments:

Approved

Disapproved

No Action Required

Chief Procurement Officer Signature

Date

Attachment: 1
Form SPO -002
Emergency Procurement SPO Maunakea

3. Describe in detail the emergency situation that created a threat to life, public health, welfare or safety.

Maunakea Emergency Situation

In 2017, OHA filed a lawsuit against the State and UH for their decades-long pattern of mismanagement of Maunakea (i.e., poor management resulting in public safety and health issues, including fatalities). On July 13, 2019, members of the Native Hawaiian community established Pu'uhonua o Pu'uhuluhulu at the base of Maunakea to provide for the safety of Native Hawaiians exercising their right to engage in Native Hawaiian traditional and customary practices and expressing their opposition to the state and UH's failure to properly manage the mountain. Since then, thousands of Native Hawaiians, including keiki and kūpuna, have gathered at the Pu'uhonua. On July 13, 2019, OHA Chair Colette Machado and OHA Trustee Dan Ahuna sent a letter to Gov. David Ige demanding the halt to all planned construction activities for the Thirty Meter Telescope (TMT) to avoid harm to Native Hawaiians and others until four material steps are taken to ensure public safety.

The hazards of Maunakea are numerous, widely recognized and include: exposure to altitude; exposure to the sun; and hazardous and rapidly-changing weather, with the potential for high winds, cold temperatures, intense fog, hail and snow. The remoteness of Maunakea exacerbates the public safety and health concerns of these hazards. Further, the NOAA Central Pacific Hurricane Center predicts an "above-normal" 2019 hurricane season for Hawaii. Two tropical storms are currently tracking near Hawai'i Island, and the hurricane season is not yet at its midpoint.

With no foreseeable end to the Maunakea dispute, the Pu'uhonua is expected to be maintained for an undetermined amount of time. On July 25, 2019, the OHA Board of Trustees approved a resolution that "expressly authorizes the OHA Administration to advocate for the rights, safety, and well-being of OHA beneficiaries" on Maunakea, including "the establishment and maintenance of pu'uhonua or safe spaces" and "an assessment and provision of health, safety, and legal needs; and any other actions as may be reasonably necessary or appropriate."



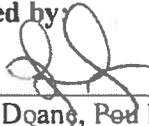
ACTION ITEM

Board of Trustees
July 25, 2019

BOT #19-11

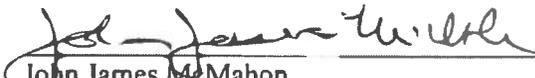
Action Item Issue: OHA's imploring of the governor to take material steps to eliminate the high potential for physical harm to OHA's beneficiaries; expressing its kaumaha over the arrest of Native Hawaiian kūpuna; opposing use of unwarranted force and calls upon the Governor to rescind his Emergency Proclamation; reiterating it has no position on the siting of the TMT on Mauna Kea; and expressly authorizing OHA Administration to take action to advocate for the rights, safety, and well-being of beneficiaries engaging in peaceful protest of the decades long mismanagement of Maunakea, perpetuating Native Hawaiian traditional and customary practices, and exercising their rights to freedom of speech and assembly.

Prepared by:



Jocelyn Doane, Pea Kāko'o Kulekele Aupuni, Public Policy Manager 7/23/19
Date

Reviewed by:



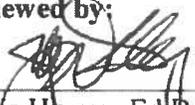
John James McMahon 7/23/19
Pōhaku Kihī Paia Kū, Counsel for Advocacy Date

Reviewed by:



Keola Lindsey 7/23/19
Ka Pou Kihī Kū, Chief Advocate Date

Reviewed by:



Sylvia Hussey, Ed.D. 7/23/19
Ka Pūhāna, Interim Chief Executive Officer Date

Reviewed by:



Trustee Dan Ahuna 7-23-19
Maunakea Ad Hoc Committee Chair Date

Reviewed by:

Colette Y Machado

07/23/19

Trustee Colette Machado

Date

Ke Kauhuhu o ke Kaupoku, Chairperson
Board of Trustees

I. Action

The Maunakea Ad Hoc Committee approves and recommends that the Board of Trustees approve a Board resolution that implores the governor to take material steps to eliminate the high potential for physical harm to OHA's beneficiaries; expresses its kaumaha over the arrest of Native Hawaiian kūpuna; opposes use of unwarranted force and calls upon the Governor to rescind his Emergency Proclamation; reiterates it has no position on the siting of the TMT on Mauna Kea; and expressly authorizing OHA Administration to take action to advocate for the rights, safety, and well-being of beneficiaries engaging in peaceful protest of the decades long mismanagement of Maunakea, perpetuating Native Hawaiian traditional and customary practices, and exercising their rights to freedom of speech and assembly.

II. Issue

Should the OHA Board of Trustees approve the attached resolution.

III. Discussion

On November 7, 2017, the Office of Hawaiian Affairs (OHA) filed a lawsuit in the First Circuit Court against the State of Hawai'i (state) and the University of Hawai'i (UH) for their longstanding and well-documented mismanagement of Maunakea, contrary to the public trust and the terms of UH's lease of these "ceded" and culturally sacred lands. Four state audits and a UH study corroborated the pattern of mismanagement alleged in OHA's lawsuit.

In 2015, leadership of both the state and UH publicly admitted to the Maunakea management failures, with Governor David Ige conceding that the state has "not done right by" and "failed" the mountain, and UH President David Lassner stating that UH "has not yet met all of [its] obligations to the mountain or the expectations of the community." OHA subsequently engaged in good faith efforts from 2015 to 2017 to address these management shortcomings with the state and UH, but these efforts were unsuccessful.

Accordingly, OHA filed a lawsuit in 2017, asserting that as trustees of Maunakea, both the state and UH breached their moral and legal obligations to appropriately manage Maunakea. OHA's lawsuit identifies numerous issues and failings that have contributed to the continued mismanagement of Maunakea by the state and UH.

The state and UH have continued to fail to take meaningful steps to address their management failures. Nevertheless, on July 15, 2019, the state started implementing its plans to assist in providing access for construction equipment, personnel, and materials for the construction of the Thirty Meter Telescope (TMT). In response, TMT opponents and those calling for better management of Maunakea started gathering near and on Mauna Kea Access Road, with as much as 1,000 demonstrators or more present as of July 17, 2019.

Notably, demonstrators at the Mauna Kea Access Road have strictly abided by the nonviolent principles of “kapu aloha,” implemented rules for peaceful conduct and behavior, and have otherwise ensured that the demonstration area and adjacent encampment remain orderly, clean, and safe. Nonetheless, the state’s preparation and response has been to substantially increase law enforcement presence at the demonstration site, including from state law enforcement agencies and from the various counties, and to equip law enforcement personnel with riot control gear, including with what has been reported to be military-oriented Long Range Acoustic Devices designed for use against armed combatants and capable of inflicting significant and potentially irreparable bodily harm.

Most recently, despite no reports of violence by anyone associated with the demonstration, and despite the continuously well-organized and peaceful behavior of the Access Road demonstrators even during and after the early morning arrest of over 30 elderly kūpuna, Governor David Ige issued an Emergency Proclamation (Proclamation) on July 17, 2019 to, among other cited purposes, “suppress or prevent lawless violence.” The emergency proclamation, which applied to certain areas along and including Saddle Road and the demonstrators’ encampment, authorized state and county law enforcement to direct the “mandatory evacuation” of citizens, and directed and authorized the activation of the Hawai’i National Guard, “to insure the compliance with the civil laws of the state of Hawai’i” and to “coordinate with State law enforcement agencies for missions and assignments.”

In light of the state’s heavily enforcement-oriented and now militarized response; the continued and reaffirmed commitment of many Native Hawaiians, including elderly and physically vulnerable kūpuna and others, to continue demonstrating against the mismanagement of Maunakea; and the significant potential risk of bodily, psychological, and legal harm to demonstrators at the hands of law enforcement and military personnel; OHA’s mission to promote and protect the interests of Native Hawaiians may now warrant the express authorization of the OHA administration to take action to advocate for the rights, safety, and well-being of its beneficiaries, as well as to uphold the constitutional rights of its beneficiaries.

IV. Recommendation

To approve an OHA resolution expressly authorizing the OHA administration to take action to facilitate the safety and well-being and to uphold the legal rights of beneficiaries engaging in peaceful protest of the decades-long mismanagement of Maunakea, perpetuating Native Hawaiian traditional and customary practices, and exercising their rights to freedom of speech and assembly.

V. Alternative Actions

- A. To not approve staff's recommended resolution
- B. To approve an amended version of staff's recommended resolution

VI. Funding

No funding is required.

VII. Timeframe

Immediate action is recommended.

VIII. Attachments

- A. Resolution

RESOLUTION EXPLICITLY AUTHORIZING THE OFFICE OF HAWAIIAN AFFAIRS' ADMINISTRATION TO TAKE ACTION TO ADVOCATE FOR THE RIGHTS, SAFETY, AND WELL-BEING OF BENEFICIARIES ENGAGING IN PEACEFUL PROTEST OF THE DECADES-LONG MISMANAGEMENT OF MAUNAKEA, PERPETUATING NATIVE HAWAIIAN TRADITIONAL AND CUSTOMARY PRACTICES, AND EXERCISING THEIR RIGHTS TO FREEDOM OF SPEECH AND ASSEMBLY

WHEREAS, on November 7, 2017, the Office of Hawaiian Affairs (OHA) filed a lawsuit in First Circuit court against the State of Hawai'i and the University of Hawai'i (UH) for their longstanding and well-documented mismanagement of Maunakea, contrary to the public trust and the terms of UH's lease of these "ceded" and culturally sacred lands; and

WHEREAS, four state audits spanning twenty years have documented and criticized the state and UH's mismanagement of Maunakea; and

WHEREAS, the initial audit from 1998 concluded that "little was done" to protect the natural resources on Maunakea since the first telescope was constructed in 1968, and that UH did not allocate sufficient resources to protect Maunakea's natural and cultural resources because it focused primarily on astronomy development; and

WHEREAS, three follow-up state audits revealed that while some progress had been made, more needed to be done; and

WHEREAS, despite having been granted rulemaking authority by the state Legislature in 2009 to improve its management of Maunakea, and despite the 2014 audit's direct warning that "[u]ntil [UH] adopts administrative rules for its Maunakea lands, UH cannot fulfill its stewardship responsibilities," to this day UH has not promulgated a single administrative rule, and has repeatedly failed to draft rules that would adequately address critical management and cultural concerns expressed by OHA and Native Hawaiians for years, if not decades; and

WHEREAS, in a 2010 study, UH conceded that from a cumulative perspective, past, present and reasonably foreseeable future activities on Maunakea resulted and will result in substantial and adverse impacts to the Mauna's cultural, archaeological, historical, and natural resources and sites; and

WHEREAS, in 2015, the leadership of both the state and UH publicly admitted to their management failures, with Governor David Ige conceding that the state has "not done right by" and "failed" the mountain, and UH President David Lassner stating that UH "has not yet met all of [its] obligations to the mountain or the expectations of the community"; and

WHEREAS, in 2015, OHA entered in good faith into a mediated process with the state and UH to address these management shortcomings, which, after a two-year process, was ultimately unsuccessful; and

WHEREAS, OHA's subsequent lawsuit asserts that as trustees of Maunakea, both the state and UH have breached their moral and legal obligations to appropriately manage Maunakea; and

WHEREAS, OHA's lawsuit identifies numerous issues and failings that have contributed to the continued mismanagement of Maunakea by the state and UH, including the:

- Failure to budget and fund proper management of Maunakea;
 - Failure to prudently negotiate sublease terms – for example, by allowing the existing telescopes to pay a nominal rent of \$1, or not pay rent at all, despite their significant impacts and Maunakea's overwhelming and longstanding management needs;
 - Failure to adequately implement the 2009 Comprehensive Management Plan, with 32 of the 54 management actions that specifically affect Native Hawaiians remaining incomplete;
 - Failure to create an environment respectful of Maunakea's cultural landscape, including by not adequately protecting Native Hawaiian traditional and customary rights and practices on Maunakea;
 - Failure to manage access to Maunakea and activities on Maunakea, which has led to vehicular accidents, personal injuries and deaths, and hazardous material spills, among other incidents; and
 - Failure to manage observatory development and decommissioning;
- and

WHEREAS, OHA has continuously advocated for improved management of Maunakea before the Legislature, the UH Board of Regents, UH's Office of Mauna Kea Management, and the state Board of Land and Natural Resources; and

WHEREAS, OHA finds that even after filing its 2017 lawsuit, the state and UH have failed to take meaningful steps to address their management failures, and inappropriate activities and public safety incidents have continued to occur, cultural structures have been destroyed, and implementation of critical comprehensive management plan action items have remained unperformed, all with little response, much less corrective action, by the state and UH; and

WHEREAS, on June 20, 2019, state and county law enforcement arrested a member of the Native Hawaiian community and dismantled cultural and religious structures on Maunakea, with no consultation with or warning to the Native Hawaiian community; and

WHEREAS, on July 10, 2019, Governor David Ige, UH President David Lassner, and Thirty Meter Telescope (TMT) International Observatory Board of Governors' Chairman Henry Yang announced that construction for the TMT would begin on July 15; and

WHEREAS, on July 17, 2019, over 30 Native Hawaiians and others, including many kūpuna, some beacons of the Native Hawaiian community, were arrested for engaging in peaceful protest and civil disobedience on Maunakea in response to the July 10 announcement; and

WHEREAS, on July 17, 2019, Governor David Ige issued an Emergency Proclamation that allowed the suspension of various laws for the purpose of calling into active service the Hawaii National Guard and ordering the Adjutant General of the Hawaii National Guard to activate Hawaii National Guard units; and

WHEREAS, in light of the ongoing neglect and mismanagement of Maunakea, the clear and unwarranted bias against those concerned for Maunakea, and the continued and reaffirmed commitment of many Native Hawaiians and others to demonstrate until their ongoing concerns have been addressed, it is highly likely and clearly foreseeable that confrontations and demonstrations will result in bodily harm and psychological trauma to OHA's beneficiaries and others at the hands of the state, UH, and law enforcement; and

WHEREAS, Native Hawaiians have endured injustices that have persisted, unaddressed, for over a century, manifested today in systemic inequities that permeate our criminal justice system, public education institutions, land use and planning decisions, natural and cultural resource management, state funding prioritization, and, notably, the management and administration of Maunakea as well as other sacred spaces; and

WHEREAS, Native Hawaiians have a well-established history of relying on their freedom of expression and assembly and on the use of civil disobedience to amplify their long-denied rights and voice their concerns in the face of governmental indifference, social injustice, and systemic oppression; now, therefore,

BE IT RESOLVED, that the OHA Board of Trustees respectfully implores that the state take material steps to eliminate the clearly foreseeable and high potential for physical harm and psychological trauma to Native Hawaiians seeking to uphold their cultural and spiritual beliefs and to voice their opposition to the decades-long pattern of mismanagement of Maunakea, by 1) condemning and prohibiting any further government action to provoke or intimidate Native Hawaiian cultural practitioners and others seeking to protect Maunakea; 2) coordinating with relevant state and county agencies, UH officials, OHA representatives, and Native Hawaiian community members to meaningfully alleviate tensions; 3) prohibiting, unconditionally, the use of any and all unwarranted force against Native Hawaiians and others engaged in peaceful protest on Maunakea; and 4) ensuring the safety of all who wish to exercise their cultural practices and right to peaceful expression and opposition; and

BE IT FURTHER RESOLVED, that the OHA Board of Trustees expresses deep kaumaha over the arrest of Native Hawaiian kūpuna and others engaged in peaceful protest over the continual dismissal and rejection of Native Hawaiians' concerns over the mismanagement of Maunakea; and

BE IT FURTHER RESOLVED, that the OHA Board of Trustees strongly opposes the use of unwarranted force, such as the use of Long Range Acoustic Devices, batons, tear gas, or any other action that may result in physical harm or psychological trauma, against Native Hawaiians engaged in peaceful protest on Maunakea and calls upon the Governor to rescind his Emergency Proclamation dated July 17, 2019; and

BE IT FURTHER RESOLVED, that while the OHA Board of Trustees reiterates its lack of a position on the siting of the TMT on Maunakea, the physical safety, psychological integrity, cultural practices, and free speech rights of all Native Hawaiians are of paramount and overriding concern; and

BE IT FURTHER RESOLVED, that the OHA Board of Trustees expressly authorizes the OHA Administration to advocate for the rights, safety, and well-being of OHA beneficiaries engaging in peaceful protests of the state's decades-long pattern of mismanagement of Maunakea, perpetuating their constitutionally protected Native Hawaiian traditional and customary practices, and exercising their constitutionally protected rights of freedom of speech and assembly, including but not limited to: the negotiation of rules of engagement; the establishment and maintenance of pu'uhonua or safe spaces; the observation and documentation of actions by law enforcement, government, university or community personnel; an assessment and provision of health, safety, and legal needs; and any other actions as may be reasonably necessary or appropriate; and

BE IT FURTHER RESOLVED, that certified copies of this Resolution be transmitted to the Governor of the State of Hawai'i, the Attorney General of the State of Hawai'i, the Chair of the state Board of Land and Natural Resources, the President of the University of Hawai'i, and the Mayor of the County of Hawai'i.

ADOPTED, this ___th day of ___ 2019, island of O'ahu, State of Hawai'i, by the Board of Trustees of the Office of Hawaiian Affairs in its regular meeting assembled.

A Resolution of the Office of Hawaiian Affairs

RESOLUTION EXPLICITLY AUTHORIZING THE OFFICE OF HAWAIIAN AFFAIRS' ADMINISTRATION TO TAKE ACTION TO ADVOCATE FOR THE RIGHTS, SAFETY, AND WELL-BEING OF BENEFICIARIES ENGAGING IN PEACEFUL PROTEST OF THE DECADES-LONG MISMANAGEMENT OF MAUNAKEA, PERPETUATING NATIVE HAWAIIAN TRADITIONAL AND CUSTOMARY PRACTICES, AND EXERCISING THEIR RIGHTS TO FREEDOM OF SPEECH AND ASSEMBLY

WHEREAS, on November 7, 2017, the Office of Hawaiian Affairs (OHA) filed a lawsuit in First Circuit court against the State of Hawai'i and the University of Hawai'i (UH) for their longstanding and well-documented mismanagement of Maunakea, contrary to the public trust and the terms of UH's lease of these "ceded" and culturally sacred lands; and

WHEREAS, four state audits spanning twenty years have documented and criticized the state and UH's mismanagement of Maunakea; and

WHEREAS, the initial audit from 1998 concluded that "little was done" to protect the natural resources on Maunakea since the first telescope was constructed in 1968, and that UH did not allocate sufficient resources to protect Maunakea's natural and cultural resources because it focused primarily on astronomy development; and

WHEREAS, three follow-up state audits revealed that while some progress had been made, more needed to be done; and

WHEREAS, despite having been granted rulemaking authority by the state Legislature in 2009 to improve its management of Maunakea, and despite the 2014 audit's direct warning that "[u]ntil [UH] adopts administrative rules for its Maunakea lands, UH cannot fulfill its stewardship responsibilities," to this day UH has not promulgated a single administrative rule, and has repeatedly failed to draft rules that would adequately address critical management and cultural concerns expressed by OHA and Native Hawaiians for years, if not decades; and

WHEREAS, in a 2010 study, UH conceded that from a cumulative perspective, past, present and reasonably foreseeable future activities on Maunakea resulted and will result in substantial and adverse impacts to the Mauna's cultural, archaeological, historical, and natural resources and sites; and

WHEREAS, in 2015, the leadership of both the state and UH publicly admitted to their management failures, with Governor David Ige conceding that the state has "not done right by" and "failed" the mountain, and UH President David Lassner stating that UH "has not yet met all of [its] obligations to the mountain or the expectations of the community"; and

WHEREAS, in 2015, OHA entered in good faith into a mediated process with the state and UH to address these management shortcomings, which, after a two-year process, was ultimately unsuccessful; and

A Resolution of the Office of Hawaiian Affairs

WHEREAS, OHA's subsequent lawsuit asserts that as trustees of Maunakea, both the state and UH have breached their moral and legal obligations to appropriately manage Maunakea; and

WHEREAS, OHA's lawsuit identifies numerous issues and failings that have contributed to the continued mismanagement of Maunakea by the state and UH, including the:

- Failure to budget and fund proper management of Maunakea;
- Failure to prudently negotiate sublease terms – for example, by allowing the existing telescopes to pay a nominal rent of \$1, or not pay rent at all, despite their significant impacts and Maunakea's overwhelming and longstanding management needs;
- Failure to adequately implement the 2009 Comprehensive Management Plan, with 32 of the 54 management actions that specifically affect Native Hawaiians remaining incomplete;
- Failure to create an environment respectful of Maunakea's cultural landscape, including by not adequately protecting Native Hawaiian traditional and customary rights and practices on Maunakea;
- Failure to manage access to Maunakea and activities on Maunakea, which has led to vehicular accidents, personal injuries and deaths, and hazardous material spills, among other incidents; and
- Failure to manage observatory development and decommissioning; and

WHEREAS, OHA has continuously advocated for improved management of Maunakea before the Legislature, the UH Board of Regents, UH's Office of Mauna Kea Management, and the state Board of Land and Natural Resources; and

WHEREAS, OHA finds that even after filing its 2017 lawsuit, the state and UH have failed to take meaningful steps to address their management failures, and inappropriate activities and public safety incidents have continued to occur, cultural structures have been destroyed, and implementation of critical comprehensive management plan action items have remained unperformed, all with little response, much less corrective action, by the state and UH; and

WHEREAS, on June 20, 2019, state and county law enforcement arrested a member of the Native Hawaiian community and dismantled cultural and religious structures on Maunakea, with no consultation with or warning to the Native Hawaiian community; and

WHEREAS, on July 10, 2019, Governor David Ige, UH President David Lassner, and Thirty Meter Telescope (TMT) International Observatory Board of Governors' Chairman Henry Yang announced that construction for the TMT would begin on July 15; and

WHEREAS, on July 17, 2019, over 30 Native Hawaiians and others, including many kūpuna, some beacons of the Native Hawaiian community, were arrested for engaging in peaceful protest and civil disobedience on Maunakea; and

WHEREAS, on July 17, 2019, Governor David Ige issued an Emergency Proclamation that allowed the suspension of various laws for the purpose of calling into active service the Hawaii National Guard and ordering the Adjutant General of the Hawaii National Guard to activate Hawaii National Guard units; and

A Resolution of the Office of Hawaiian Affairs

WHEREAS, in light of the ongoing neglect and mismanagement of Maunakea, and the continued and reaffirmed commitment of many Native Hawaiians and others to demonstrate until their ongoing concerns have been addressed, it is possible that confrontations and demonstrations may result in bodily harm and psychological trauma to OHA's beneficiaries and others at the hands of the state, UH, and law enforcement; and

WHEREAS, the OHA Board of Trustees expresses deep kaumaha over the arrest of Native Hawaiian kūpuna and others engaged in peaceful protest over the continual dismissal and rejection of Native Hawaiians' concerns over the mismanagement of Maunakea; and

WHEREAS, Native Hawaiians have endured injustices that have persisted, unaddressed, for over a century, manifested today in systemic inequities that permeate our criminal justice system, public education institutions, land use and planning decisions, natural and cultural resource management, state funding prioritization, and, notably, the management and administration of Maunakea as well as other sacred spaces; and

WHEREAS, Native Hawaiians have a well-established history of relying on their freedom of expression and assembly and on the use of civil disobedience to amplify their long-denied rights and voice their concerns in the face of social injustice, and systemic oppression; now, therefore,

BE IT RESOLVED, that the OHA Board of Trustees expressly authorizes the OHA Administration to advocate for the rights, safety, and well-being of OHA beneficiaries engaging in peaceful protests of the state's decades-long pattern of mismanagement of Maunakea, perpetuating their constitutionally protected Native Hawaiian traditional and customary practices, and exercising their constitutionally protected rights of freedom of speech and assembly, including but not limited to: the negotiation of rules of engagement; the establishment and maintenance of pu'uhonua or safe spaces; the observation and documentation of actions by law enforcement, government, university or community personnel; an assessment and provision of health, safety, and legal needs; and any other actions as may be reasonably necessary or appropriate; and

BE IT FURTHER RESOLVED, that the OHA Board of Trustees respectfully implores that the state take material steps to eliminate the clearly foreseeable and high potential for physical harm and psychological trauma to Native Hawaiians seeking to uphold their cultural and spiritual beliefs and to voice their opposition to the decades-long pattern of mismanagement of Maunakea, by 1) condemning and prohibiting any further government action to provoke or intimidate Native Hawaiian cultural practitioners and others seeking to protect Maunakea; 2) coordinating with relevant state and county agencies, UH officials, OHA representatives, and Native Hawaiian community members to meaningfully alleviate tensions; 3) prohibiting, unconditionally, the use of any and all unwarranted force against Native Hawaiians and others engaged in peaceful protest on Maunakea; and 4) ensuring the safety of all who wish to exercise their cultural practices and right to peaceful expression and opposition; and

BE IT FURTHER RESOLVED, that the OHA Board of Trustees strongly opposes the use of unwarranted force, such as the use of Long Range Acoustic Devices, batons, tear gas, or any other action that may result in physical harm or psychological trauma, against Native Hawaiians engaged in peaceful protest on Maunakea and calls upon the Governor to rescind his Emergency Proclamation dated July 17, 2019; and

A Resolution of the Office of Hawaiian Affairs

BE IT FURTHER RESOLVED, that certified copies of this Resolution be transmitted to the Governor of the State of Hawai'i, the Attorney General of the State of Hawai'i, the Chair of the state Board of Land and Natural Resources, the President of the University of Hawai'i, and the Mayor of the County of Hawai'i.

ADOPTED, this 25th day of July 2019, island of O'ahu, State of Hawai'i, by the Board of Trustees of the Office of Hawaiian Affairs in its regular meeting assembled.

Colette Y. Machado

Colette Y. Machado
Ke Kauhuhu, Chairperson,
Trustee, Moloka'i and Lāna'i

[Signature]

Brendon Kani'āina Lee
Ka Hope Kauhuhu, Vice Chair,
Trustee, At-Large

[Signature]

Lei Ahu Isa, Ph.D.
Ke Kua Pae Mokupuni,
Trustee, At-Large

[Signature]

Dan Ahuna
Ke Kua Kaua'i and Ni'ihau,
Trustee, Kaua'i and Ni'ihau

[Signature]

Kaleihikina Akaka
Ke Kua O'ahu,
Trustee, O'ahu

[Signature]

Keli'i Akina, Ph.D.
Ke Kua Pae Mokupuni,
Trustee, At-Large

[Signature]

Carmen Hulu Lindsey
Ke Kua Maui,
Trustee, Maui

[Signature]

Robert K. Lindsey
Ke Kua Hawai'i,
Trustee, Hawai'i

[Signature]

John D. Waihe'e IV
Ke Kua Pae Mokupuni,
Trustee, At-Large



Date: July 25, 2019

PHONE (808) 594-1888



FAX (808) 594-1938

STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HWY., SUITE 200
HONOLULU, HAWAII 96817

July 12, 2019

The Honorable David Y. Ige
Governor, State of Hawai'i
Office of the Governor
415 S. Beretania Street, Fifth Floor
Honolulu, HI 96813

Re: Demanding an Immediate Halt on All Planned Construction Activities for the Thirty Meter Telescope to Avoid Foreseeable Harm to Native Hawaiians and the Public Until Material Steps are Taken

Dear Governor Ige,

As the Chair of the Board of Trustees of the Office of Hawaiian Affairs (OHA) and the Chair of the OHA's Ad Hoc Committee on Maunakea, we write to respectfully but firmly demand that your administration place an **immediate hold** on all planned construction activities for the Thirty Meter Telescope project (TMT), until material steps have been taken to sufficiently minimize the highly foreseeable potential for physical harm and psychological trauma to Native Hawaiians seeking to practice their culture and to voice their opposition to the decades-long pattern of mismanagement of one of our islands' most sacred spaces. These steps at a minimum would specifically include: (1) Condemning and prohibiting, unconditionally, any further government action to provoke or intimidate Native Hawaiian cultural practitioners or Protectors; (2) Coordinating with all relevant state and county agencies, UH officials, OHA representatives, and Native Hawaiian community members to meaningfully alleviate tensions; (3) Prohibiting, unconditionally, the use of any and all unwarranted force against nonviolent protestors and Protectors; and (4) Ensuring the safety of all who wish to exercise their cultural practices and right to peaceful expression and opposition.

Four years ago, we were encouraged by your recognition that the State and UH have "not done right" by Maunakea, and that, consistent with the findings of four audits spanning twenty years, the State has continuously "failed" in its management responsibilities for this singularly unique and cherished place. We had hoped that your recognition of the State's historical and ongoing breach of its trust duties signaled a new potential era of proactive effort, mutual understanding, and the long-awaited healing of wounds that have remained open and festering for decades.

However, rather than take meaningful steps to address and finally resolve the laundry list of management failures underlying the ongoing environmental and cultural degradation of Maunakea, your administration up to this point has only continued the decades-long practice of dismissiveness of and, at best, lip service to the justified concerns expressed by Native Hawaiians, OHA, and others. Inappropriate and borderline sacrilegious activities by extreme sports enthusiasts and visitors, the

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destruction of cultural features, unfulfilled promises and legal obligations to protect endangered native species and critical habitats, and public safety incidents and threats have all continued, with little response much less corrective action by the State or UH. Meanwhile, in apparent reaction to the empty threats of foreign investors and observatory affiliates, the State and UH have only acted with undue haste to intimidate "Protectors" and facilitate the construction of the highly controversial and divisive TMT: levying unfounded and purely speculative allegations of lawlessness and natural resource impacts by Protectors; forcefully arresting peaceful Protectors using "emergency" rules so patently unjustified that they were invalidated at first impression by a district court; arresting Protectors standing peacefully outside of a Board of Land and Natural Resources meeting room; bulldozing ahu and dismantling culturally significant structures, symbolic of the shared concern and care for Maunakea; fast-tracking administrative rules that protect observatory operations while failing to implement management plan promises or protect Native Hawaiian traditional and customary practices, and even expending much-needed state funds to purchase military-grade crowd control devices developed for use against armed combatants and capable of inflicting permanent bodily harm.

Accordingly, in light of the ongoing neglect and mismanagement of Maunakea, the clear and unwarranted bias against those concerned for this sacred space, and the continued and reaffirmed commitment of many Native Hawaiians and others to protest the TMT unless and until their ongoing concerns have been addressed, it is highly likely and clearly foreseeable that the commencement of construction activities for the TMT will result in bodily harm and psychological trauma to OHA's beneficiaries and others at the hands of the State. In the interests of peace, justice, and public safety, we therefore implore you to place a halt on all TMT construction activities pending the identification of solutions to more meaningfully respect the cultural beliefs and well-founded concerns of Native Hawaiians and others, and ensure the safety of those wishing to practice their culture and express their concerns.

We understand that some proponents of the TMT may express their own sense of injustice, due to perceived additional delays in what they knew from the outset would be an extremely controversial and divisive project, involving the development of an unprecedented, 18-story structure on culturally sacred and historically maltreated grounds. However, we note that many Native Hawaiians, including those committed to protecting the Mauna, have endured injustices that have persisted, unaddressed, for over a century, manifested today in systemic inequities that permeate our criminal justice system, public education institutions, land use and planning decisions, natural resource management, funding prioritization, and, notably, the management and administration of Maunakea as well as other sacred spaces. To elevate the concerns of those focused solely on their narrow interests in observatory development and with little to no connection to Hawai'i and its host culture – while neglecting the concerns of and placing in harm's way Native Hawaiians who have endured generations of unaddressed grievances in their own homelands – would be a gross miscarriage of justice that would only stain the legacy of your tenure as Governor of our island home.

Therefore, we respectfully implore and demand that you and your administration halt construction activities relating to TMT until steps are taken to avoid physical and psychological harm to OHA's beneficiaries, who have and will continue to express their opposition to the continued mismanagement and maltreatment of Maunakea. This would include, at minimum, the following:

1. **Condemn and prohibit**, unconditionally, any further government action to provoke or intimidate Native Hawaiian cultural practitioners or Protectors, including through the dismantling of culturally or spiritually significant structures or the issuance of unfounded

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allegations or statements that mischaracterize or dismiss cultural and environmental concerns;

2. **Coordinate** with all relevant state and county agencies, UH officials, OHA representatives, and Native Hawaiian community members to meaningfully alleviate tensions within the Native Hawaiian community and recognize and respect all cultural beliefs regarding the sacred Mauna, as necessary to ensure the safety and well-being of OHA's beneficiaries;
3. **Prohibit**, unconditionally, the use of any and all unwarranted force against nonviolent protestors and Protectors, including the use of any Long Range Acoustic Devices (LRAD) or "less-than-lethal" weapons and crowd control devices capable of inflicting bodily or psychological harm; and
4. **Ensure** the safety of all who wish to exercise their cultural practices and right to peaceful expression and opposition, including through the mutually agreed-upon establishment of sufficient spaces where Protectors and practitioners may safely assemble, rest, monitor, and voice their opposition to any government-sanctioned activities that may occur on Maunakea, including near or on its summit and near any cultural features or sites.

As a final note, while we recognize that we may have differences in opinion regarding the appropriateness of the TMT project or even the State's and UH's management of Maunakea, we sincerely hope that we can all share the same concern for the health, safety, and well-being of Native Hawaiians, all state residents and all voices on the topic. As you know, OHA has no position on the siting of the TMT on Maunakea; however, as trustees of OHA and as Native Hawaiians committed to our community, the physical safety, psychological integrity, cultural practices, and free speech rights of all Native Hawaiians must be of paramount and overriding concern.

Mahalo a nui loa for your careful consideration of this matter.

'O wau iho nō,



Colette Y. Machado
Chairperson, OHA Board of Trustees



Dan Ahuna
Chair, Ad Hoc Committee on Maunakea

CC:

Clare Connors, Attorney General, State of Hawai'i
David Lassner, President, University of Hawai'i System
Suzanne Case, Chairperson, Board of Land & Natural Resources
Harry Kim, Mayor, Hawai'i County