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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

July 26, 2019

David Lassner, President
University of Hawai'i System
2444 Dole Street, Bachman Hall 202
Honolulu, HI 96822

**SUBJECT: PROPOSED CONSTRUCTION OF THE THIRTY-METER
TELESCOPE ON THE SUMMIT OF MAUNA KEA
(COMMUNICATION II)**

Dear President Lassner,

Mahalo for your acknowledgement of my July 12th communication. This follow-up letter is in response to statements made in your July 18, 2019 correspondence.

With regard to the content of your letter in which you write, *"The safety of all persons (members of the public and construction workers alike) is the highest priority of everyone involved in the Thirty Meter Telescope project. The Governor and other State officials handling the public safety arrangements for the start of project construction have emphasized this point, and that the project has all approvals required by law."* I partially concur that, as week two of protests concludes, it is apparent that common ground has been established by high levels of government, law enforcement, *kia'i*, etc. that safety of all involved and affected by the proposed TMT construction stands as the highest priority and of utmost importance.

However, with all due respect to the position you hold as President of Hawai'i's highest educational institution - the University of Hawai'i System, and as the lessee to the summit of Mauna Kea, which the University of Hawai'i subleased to TMT, your rather curt response is unacceptable and irresponsible

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considering what appears to be the irrefutable historical information now publicly available on a global level.

My letter specifically addressed the invalidity of General Lease No. S-4191, the war crime of destruction of property, and native tenant rights. Your letter does not address any of these issues. And whether or not, as you stated, the "Governor and other State officials [are] handling the public safety arrangements," this is an apparent attempt to shift attention away from the substance of my letter, which is the invalidity of the leases.

The media, except for Maui Now and the Maui News, that covered my press release concerning my July 12th letter to you, has managed to portray the proposed TMT construction as if it is an issue of science and jobs versus Native Hawaiian culture. As a Council member and kama'aina from Lahaina, Maui, I am not against science nor am I against jobs. I am, however, against violations of the law and just rights of Native Hawaiians in the name of science and jobs.

The University of Hawai'i, not the Governor, is responsible for what has and continues to take place on the summit of Mauna Kea since its lease was granted in 1968 by the Board of Land and Natural Resources and subsequently subleased to TMT. This includes the responsibility for the recent arrests of 38 people, including kupuna, at least four of whom are residents of the County of Maui. Your failure to adhere to my urgent request to stand down until your legal counsel could refute the information provided in my July 12th letter to you resulted in irreparable harm to our kupuna, and your letter provided no such refutation.

This shifting of the focus of attention to the Governor was recently brought up by Lee Cataluna in her article in the Star-Advertiser on July 24, 2019 titled "Ige throws mountain of distraction as TMT foes stay focused." She wrote:

It would be wrong to focus on Gov. David Ige as the source of the problem and the key to the solution. Ige has the power of his current position, but he's not the money behind TMT or the ambition behind the consortium. He's just a passive-aggressive politician with zero leadership skills. Protecting Mauna Kea is not about winning over or defeating Ige. It just means going around him.

What we knew about Hawai'i's legal and political history in 1968 when the university was granted the lease has dramatically changed as a result of academic research at the University of Hawai'i at Manoa, which you preside over. Dr. Sai is a product of the political science doctoral program at the University of Hawai'i at Manoa attending from 2004 to 2008, and the professors who were members of his doctoral committee speak to the caliber of his doctoral research and conclusions regarding the prolonged occupation of Hawai'i by the United States since 1893.

Professor Neil Milner, political scientist and former ombudsman for the University of Hawai'i at Manoa, served as chair of Dr. Sai's doctoral committee. Other professors from the political science department included John Wilson and Katherina Hyer. Outside of the political science department, members included Professor Aviam Soifer, Dean of the William S. Richardson School of Law; Professor Matthew Craven, Dean from the University of London, SOAS, School of Law; and Professor Jon Osorio from the University of Hawai'i, currently serving as Dean of the University of Hawai'i's Hawai'inuiakea School of Hawaiian Knowledge. I would not consider any of the members of his doctoral committee as academic activists, but rather as reputable professionals in their own fields. Dr. Sai is also a faculty member at the University of Hawai'i who teaches undergraduate as well as graduate courses on this subject, in addition to sitting on doctoral committees himself.

Furthermore, the University of Hawai'i cannot escape the fact that even the United States Congress, in its Apology Resolution in 1993 (107 Stat. 1512), admitted that the overthrow of the Hawaiian Kingdom government was not only unlawful but that the so-called transfer of Hawaiian government and crown lands, which included the ahupua'a of Ka'ohe, to the United States in 1898, was done "**without the consent** of or compensation to the Native Hawaiian people of Hawai'i or their sovereign [Hawaiian Kingdom] government." This was not known in 1968.

The United States did not acquire title to Ka'ohe in 1898, therefore it could not convey what it didn't have to the State of Hawai'i in 1959. Consequently, the State of Hawai'i could not lease what it didn't have to the University of Hawai'i in 1968, and, therefore, the University of Hawai'i could not sublease what it didn't have to TMT. When Congress admitted that the transfer of the property occurred **without consent**, it is also an admission of who the true owner of the

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fee-simple title to Ka'ōhe is, which isn't the United States nor the State of Hawai'i. The University of Hawai'i's general lease needs to be understood in this light, which clearly makes it invalid, and, therefore, the sublease to TMT is invalid.


Your letter provided no evidence to the contrary clearly showing that the lease is valid; that the war crimes of destruction of property did not take place with the previous construction of the previous telescopes; and that the summit of Mauna Kea is not subject to the rights of native tenants. Therefore, I have to take your letter as agreeing with me that the **lease is invalid, war crimes have been committed, and native tenant rights are not intact.**

If I am mistaken and you indeed are **NOT** in agreement with me, then it would be imperative for you to immediately have your legal counsel at the University of Hawai'i "determine whether or not Dr. Sai's assessment of the situation is misplaced," which I specifically requested in my initial July 12th letter to you. To not do so is a dereliction of your duty as the grantor of the sublease to TMT, which consequently places Goodfellow Bros., a Maui company, and their employees, in legal jeopardy.

As the grantor of the sublease, I call upon you, in your capacity as President of the University of Hawai'i System, to warrant and defend the validity of the sublease due to the legal implications that have been placed on the aforementioned residents of the County of Maui that have been unlawfully arrested and the employees of Goodfellow Bros. If the lease is valid, then your legal counsel should have no problem showing the errors of Dr. Sai's assessment. I look forward to your legal counsel's response.

Should you have any questions regarding this urgent request to seek legal review of the points raised in this letter, please contact me by email at Tamara.Paltin@mauicounty.us or by phone at (808) 270-5504.

Sincerely,



TAMARA PALTIN
Councilmember

cc: The Honorable David Ige, Governor, State of Hawai'i

Clare Connors, Attorney General, State of Hawai'i

Suzanne Case, Chair, Board of Land and Natural Resources, State of Hawai'i

Henry Yang, Ph.D., Chair, TMT International Observatory (TIO) Board of Governors

Chad Goodfellow, Chief Executive Officer, Goodfellow Bros., Inc.

The Honorable Harry Kim, Mayor, County of Hawai'i

The Honorable Valerie T. Poindexter, Councilmember, Hawai'i County Council

The Honorable Aaron Chung, Chairman, Hawai'i County Council

The Honorable Karen Eoff, Vice-Chair, Hawai'i County Council

The Honorable Susan L.K. Lee Loy, Councilmember, Hawai'i County Council

The Honorable Ashley Lehualani Kierkiewicz, Councilmember, Hawai'i County Council

The Honorable Matt Kaneali'i-Kleinfelder, Councilmember, Hawai'i County Council

The Honorable Maile Medeiros David, Councilmember, Hawai'i County Council

The Honorable Rebecca Villegas, Councilmember, Hawai'i County Council

The Honorable Herbert M. Richards III, DVM, Councilmember, Hawai'i County Council



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of HAWAI'I®

David Lassner
President

July 18, 2019

Tamara A. M. Paltin
Councilmember, Maui County Council
200 South High Street, 8th Floor
Wailuku, HI 96793
Email: Tamara.Paltin@mauicounty.us

RE: PROPOSED CONSTRUCTION OF THIRTY-METER TELESCOPE ON
THE SUMMIT OF MAUNA KEA

Dear Councilmember Paltin,

This is to acknowledge receipt of your letter dated July 12, 2019. Thank you for sharing your concerns. The safety of all persons (members of the public and construction workers alike) is the highest priority of everyone involved in the Thirty Meter Telescope project. The Governor and other State officials handling the public safety arrangements for the start of project construction have emphasized this point, and that the project has all approvals required by law.

Sincerely,

A handwritten signature in black ink that reads 'David Lassner'.

David Lassner
President

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