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BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF

A Contested Case Hearing Re Conservation
District Use Permit (CDUP) HA-3568 for the
Thirty Meter Telescope at the Mauna Kea
Science Reserve, Kaohe Mauka, Hamakua
District, Island of Hawaii, TMK (3) 4-4-
015:009

Case No. BLNR-CC-16-002

**TMT INTERNATIONAL
OBSERVATORY, LLC'S
OPPOSITION TO PETITIONERS
MAUNA KEA ANAINA HOU AND
KEALOHA PISCIOTTA, CLARENCE
KUKAUAKAHI CHING, FLORES-CASE
OHANA, DEBORAH J. WARD, PAUL K.
NEVES, AND KAHEA: THE HAWAIIAN
ENVIRONMENTAL ALLIANCE'S
MOTION TO STRIKE CONSERVATION
DISTRICT USE APPLICATION,
HA-3568, DATED SEPTEMBER 2, 2010,
AND/OR MOTION FOR SUMMARY
JUDGMENT FILED JULY 18, 2016
[DOC. 94]; CERTIFICATE OF SERVICE**

**TMT INTERNATIONAL OBSERVATORY, LLC'S OPPOSITION
TO PETITIONERS MAUNA KEA ANAINA HOU AND KEALOHA
PISCIOTTA, CLARENCE KUKAUAKAHI CHING, FLORES-CASE OHANA,
DEBORAH J. WARD, PAUL K. NEVES, AND KAHEA: THE HAWAIIAN
ENVIRONMENTAL ALLIANCE'S MOTION TO STRIKE CONSERVATION
DISTRICT USE APPLICATION, HA-3568, DATED SEPTEMBER 2, 2010,
AND/OR MOTION FOR SUMMARY JUDGMENT FILED JULY 18, 2016 [DOC. 94]**

TMT International Observatory, LLC ("TIO"), by and through its undersigned counsel, hereby submits its Opposition to Petitioners Mauna Kea Anaina Hou and Kealoha Pisciotta, Clarence Kukauakahi Ching, Flores-Case Ohana, Deborah J. Ward, Paul K. Neves, and KAHEA: The Hawaiian Environmental Alliance (collectively, the "Petitioners") Motion to Strike Conservation District Use Application, HA-3568, dated September 2, 2010, and/or Motion for Summary Judgment filed on July 18, 2016 [Doc. 94] (the "Motion").

The Motion requests an order striking the Conservation District Use Application HA-3568 for the Thirty Meter Telescope Project (the "CDUA") and/or declaring the CDUA invalid, null and void, and of no effect, and dismissing the University of Hawaii at Hilo as a party to the Contested Case proceeding. The Motion fails to establish a basis to strike and dismiss the CDUA, or to dismiss University of Hawaii at Hilo as a Party. As a result, the Motion should be denied.

I. DISCUSSION

1. The Motion Should be Denied Because the CDUA was Properly Submitted

The Motion states that HAR § 13-5-31(b) requires that applications for permits under the State Conservation District Rules (HAR Chapter 13-5) be signed by the "landowner," and that in the case of state and public lands, "the State of Hawaii or government entity with management control over the parcel shall sign as landowner." Based on the foregoing, the Motion first argues that the CDUA was required to be signed by the Board of Land and Natural Resources (the

“Board”) as the government entity with management control over the property thereunder, and that because the Board did not sign the CDUA, it should be stricken and dismissed.

TIO substantively joins in the University of Hawaii at Hilo’s Opposition to Petitioners’ Mauna Kea Anaina Hou and Kealoha Pisciotta, Clarence Kukauakahi Ching, Flores-Case Ohana, Deborah J. Ward, Paul K. Neves, and KAHEA: The Hawaiian Environmental Alliance’s Motion to Strike Conservation District Use Application, HA-3568, dated September 2, 2010, and/or Motion for Summary Judgment filed July 18, 2016, filed on August 1, 2016 (the “UHH Opposition”) with regard to its response to the arguments in the Motion regarding the requisite “landowner” signature.

2. The Motion Should be Denied Because the CDUA was Properly Signed by the University of Hawaii at Hilo.

The Motion states that (1) the State, through the Board, leased the land within the MKSR to the University under General Lease S-4191, and (2) the University subleased a portion of the lands to TIO. Based on the foregoing, the Motion argues that the University, not the University of Hawaii at Hilo, was required to sign the CDUA, and that because the University’s President at that time, M.R.C. Greenwood, did not sign the CDUA, it should be stricken and dismissed. This argument is simply another futile attempt to manufacture deficiencies in the CDUA where none exist.

The University is the state university and is constituted as a body corporate under Section 304A-103 of the Hawaii Revised Statutes (“HRS”) and the Hawaii Constitution. The University consists of ten (10) campuses, including, in relevant part, the University of Hawaii at Hilo. See Haw. Rev. Stat. § 304A-101 (“There shall be a University of Hawaii that shall consist of such colleges and departments as may from time to time be established.”). As a matter of law, the University of Hawaii at Hilo is a part of the University. See Haw. Rev. Stat. § 304A-101.

The University, through its Board of Regents, is authorized to, among other things, direct its various campuses to undertake certain functions and responsibilities. Consequently, on April 16, 2009, the University, through its Board of Regents, unanimously adopted a resolution which, in relevant part, authorized and directed the University of Hawaii at Hilo, to undertake the implementation of the CMP¹ and all conditions imposed by the Board with regard to the UH Management Areas, which UH Management Areas includes the lands under the CDUA.²

Subsequently, the University, through its Board of Regents, received testimony regarding and discussed the TMT Project at the Board of Regents meeting on June 28, 2010. At the meeting, the University's President at that time, M.R.C. Greenwood, provided a report highlighting some of the capabilities of the TMT Project and what it would mean for the field of astronomy, the State, and the world. The University, through its Board of Regents, unanimously approved the TMT Project at the meeting on June 28, 2010.

¹ The Mauna Kea Science Reserve Master Plan (the "Master Plan") established management guidelines for the UH Management Areas. The Master Plan as a whole was never submitted to the Board for approval; rather, it is an internal planning document of the University. However, certain aspects of the Master Plan have been approved by the BLNR, including, for example, those portions incorporated by reference into the CMP and four sub-plans.

On April 8 and 9, 2009, the Board held its regular meeting in Hilo on the CMP. On April 9, 2009, the Board approved the CMP, conditioned upon the University developing a Project Development and Management Framework and four sub-plans as well as an annual status report on the development of each sub-plan and a status report on each management action. In satisfaction of those conditions, the University developed and submitted its Project Development and Management Framework and four sub-plans, which were approved on March 25, 2010.

On March 25, 2010, the Board approved four sub-plans to the CMP, including: (1) the Cultural Resources Management Plan (CRMP), (2) the Natural Resources Management Plan (NRMP), (3) Decommissioning Plan for the Mauna Kea Observatories (Decommissioning Plan), and (4) Public Access Plan for the UH Management Area on Mauna Kea (Access Plan).

² TIO also substantively joins in the UHH Opposition with regard to its response to the arguments in the Motion regarding the authority of the University of Hawaii at Hilo to sign the CDUA.

Thereafter, with the approval of the TMT Project by the University, the University of Hawaii at Hilo signed and submitted the CDUA to the Board on September 2, 2010. The University of Hawaii at Hilo was authorized to sign and submit the CDUA, having been authorized and directed by the University to undertake the implementation of the Comprehensive Management Plan (“CMP”) and all conditions imposed by the Board with regard to the UH Management Areas, which UH Management Areas includes the lands under the CDUA.

In this case, the signature of the Chancellor of the University’s Hilo campus is not only permitted as a matter of law, but is also particularly appropriate because a remote headquarters for the maintenance and operation of the TMT Observatory will be located on the University’s Hilo campus. The Motion fails to provide any Hawaii authority supporting its argument that the CDUA was required to have been signed by President Greenwood.

Based on the foregoing, the Motion should be denied to the extent it seeks an order striking and/or dismissing the CDUA. In addition, to the extent the Motion seeks dismissal of the University of Hawaii at Hilo based on the argument that the CDUA was required to have been signed by President Greenwood, that portion of the Motion also fails.

3. **The Motion Should be Denied Because the CDUA is Not Invalid, Null and Void.**

The third argument in the Motion with respect to the CDUA is that because Section 1.2 of the CDUA, Overview of the Proposed Use, states in part that UH is seeking a CDUP on behalf of the TMT Observatory Corporation, and not on behalf of TIO, the CDUA should be declared invalid, null and void, and of no effect. In contrast, the mere reference of TIO’s predecessor in interest, TMT Observatory Corp., which was the development entity for the TMT Project at the time the CDUA was prepared, does not invalidate the CDUA.

As set forth in TIO's Motion to Have TMT International Observatory, LLC Admitted as a Party in the Contested Case Hearing filed on April 8, 2016 [Doc. 2], TIO is a non-profit organization that was established in May 2014 to construct and operate the TMT Project. TIO's members include The Regents of the University of California ("UC"), the California Institute of Technology ("Caltech"), the National Institutes of Natural Sciences of Japan, the National Astronomical Observatories of the Chinese Academy of Sciences, the Department of Science and Technology of India, and the National Research Council of Canada. The Association of Universities for Research in Astronomy is a TIO associate. Major funding for the TMT Project has also been provided by the Gordon & Betty Moore Foundation.

The TMT Project is a collaboration among UC, Caltech, and the above-identified national governmental research organizations to design, develop, construct, and operate a thirty-meter primary telescope within the MKSR in cooperation with the University. Based on its clear property interest in the land use for which the CDUA was submitted, TIO has also been admitted as a party to the Contested Case Proceeding. See Minute Order No. 13 [Doc. 115].

The mere reference of TIO's predecessor in interest, TMT Observatory Corp., which was the development entity for the TMT Project at the time the CDUA was prepared, does not invalidate the CDUA. The Motion fails to cite any supporting Hawaii authority for the absurd proposition that such a minor change to a land use permit invalidates the same. Nothing in the administrative rules supports this conclusion. The Motion should be denied to the extent it seeks an order declaring that the CDUA is invalid, null and void, and of no effect.

In addition, the Motion reasserts the Petitioners' objections regarding the admission of TIO as a party. See Motion at 7. As a result, TIO reasserts and incorporates by reference the arguments and authorities set forth in its Motion to Have TMT International Observatory, LLC Admitted as a Party in the Contested Case Hearing filed on April 8, 2016 [Doc. 2]. If the Board is inclined to construe the Motion as one for reconsideration of the Board's Minute Order No. 13 granting, in relevant part, TIO's Motion to be Admitted as a Party, the Motion should be denied because it fails to provide new information not previously available and warranting reconsideration, or that a substantial injustice would occur absent reconsideration.

4. **The Motion Should be Denied to the Extent it Seeks Dismissal of the University of Hawaii at Hilo as a Party to the Contested Case Proceeding.**

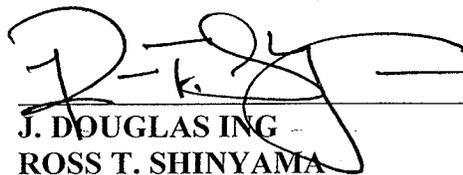
Although it is unclear, it appears that the Motion seeks the dismissal of the University of Hawaii at Hilo based on the arguments regarding the Board's signature and the University's signature through President Greenwood. In other words, the dismissal of the University of Hawaii at Hilo is premised upon these arguments, and nothing else. On the basis that these arguments fail for the reasons previously discussed, the Motion must be denied to the extent it seeks dismissal of the University of Hawaii at Hilo.

Under Minute Order No. 13, the Hearing Officer expressly determined that the University of Hawaii at Hilo has standing as a party. See Minute Order No. 13 [Doc. 115]. To the extent the Motion seeks reconsideration of the admission of the University of Hawaii at Hilo as a party to the Contested Case Proceeding, the Motion fails to provide new information not previously available and warranting reconsideration, or that a substantial injustice would occur absent reconsideration. Based on the foregoing, the Motion should be denied to the extent it seeks an order dismissing UH Hilo as a party to the Contested Case Proceeding.

II. CONCLUSION

Based on the foregoing, and upon further argument to be presented at the hearing of the Motion, the Motion should be denied.

DATED: Honolulu, Hawaii, August 1, 2016.

A handwritten signature in black ink, appearing to read 'J. Douglas Ing', is written over a horizontal line.

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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

Contested Case Hearing Re Conservation
District Use Application (CDUA) HA-3568
for the Thirty Meter Telescope at the Mauna
Kea Science Reserve, Ka'ohē Mauka,
Hāmākua, Hawai'i, TMK (3) 4-4-015:009

BLNR Contested Case HA-16-02

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the following parties by the means indicated:

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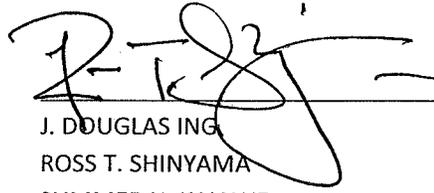
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A handwritten signature in black ink, appearing to be 'J. Douglas Ing', written over a horizontal line.

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