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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Attorney for 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, a domestic non-profit
Corporation

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
) MAUNA KEA ANAINA HOU, ET.
A Contested Case Hearing Re) AL. PETITIONERS' INITIAL
Conservation District Use Permit) OBJECTIONS TO WITNESSES
(CDUP) HA-3568 for the Thirty Meter) DESIGNATED BY OTHER PARTIES;
Telescope at the Mauna Kea Science) and CERTIFICATE OF SERVICE
Reserve, Kaohe Mauka, Hamakua)
District, Island of Hawaii,)
TMK (3) 4-4-015:009)
)
)
)

MAUNA KEA ANAINA HOU, ET AL. PETITIONERS' INITIAL OBJECTIONS TO
WITNESSES DESIGNATED BY OTHER PARTIES

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, a domestic non-profit corporation (also referred to herein collectively as "Mauna Kea Anaina Hou, Et Al." or "Petitioners"), by and through their counsel undersigned, and hereby submit their initial objections to witnesses designated by other parties in the above-entitled contested case.

Petitioners raise and incorporate their earlier objections regarding the deadlines set forth for the naming of witnesses by the Petitioners when the University of Hawaii at Hilo has the burden in the instant proceedings, TMT International Observatory, LLC is aligned with UH Hilo, as is the P.U.E.O., Inc. Petitioners should have a fair opportunity to respond to those named witnesses by naming witnesses who may also provide counter-arguments and evidence that contradicts that being presented by UH Hilo and those parties aligned with it. Otherwise, the Petitioners respectfully submit that it is a "trial by ambush" and a violation of due process. The Petitioners also respectfully object, once again, to the refusal to allow for discovery in this matter, a matter that is of significant importance as well as substantial complexity.

With respect to the witnesses named by TMT International Observatory, LLC., the Petitioners once again raise and reassert their objections filed through their Memorandum in Opposition to TMT's Motion to Have TMT International Observatory, LLC Admitted as a Party in the contested Case Hearing, filed on June 13, 2016; and Petitioners' Memorandum in Opposition to Perpetuating Unique Educational Opportunities, Inc.'s Motion to Intervene, dated May 16, 2016, filed on June 13, 2016; and the arguments made by the Petitioners on the hearing date, and object to such testimony as to relevancy and materiality in these proceedings. TMT International and its agents and representatives are neither relevant, nor material to these proceedings and neither is P.U.E.O., Inc. and its representatives as discussed in the previous opposition, as well.

P.U.E.O., Inc. did file a motion in which they sought focus on the issues in the instant case. The Petitioners would submit that once adequate disclosures and offers of proof have been made on witness testimony and discovery has been had, that a hearing similar to an HRE Rule 104 hearing be set and held to go over issues and also relevancy and materiality of witnesses and other issues.

An agency may exclude evidence that is irrelevant, immaterial, or unduly repetitious. HRS § 91-10(1). Chapter 91 requires the admission of any and all evidence limited only by considerations of relevancy, materiality and repetition. Cazimero v. Kohala Sugar Co., 54 Haw. 479, 510 P.2d 89 (1973). By their very terms, the Hawai'i Rules of Evidence (HRE) only "govern proceedings in the courts

of the State of Hawaii.” HRE Rule 101. Thus, the rules of evidence generally do not apply in a contested case proceeding. This means, for example, that hearsay evidence is admissible in administrative hearings. Price v. Zoning Bd. of App. of Honolulu, 77 Hawai‘i 168, 176, 883 P.2d 629, 637 (1994), and that HRE only permit qualified experts to offer opinions, HRE Rules 701 and 702, but such rules are generally not applicable in a contested case hearing. Petitioners submit, however, such doctrines as due process, and a meaningful opportunity be heard at a meaningful time, and the right to confront, certainly are also all required in administrative hearings.

Generally, “[t]he testimony of expert witnesses is ... confined to matters of fact, as distinguished from matters of law.” Create 21 Chuo, Inc. Southwest Slopes, Inc., 81 Hawai‘i 512, 522 n.4, 918 P.2d 1168, 1178 n.4 (Haw.App. 1996). In other words, an “expert or nonexpert opinion that amounts to a conclusion of law cannot be properly received in evidence, since the determination of such questions is exclusively within the province of the court.” Id. (citation omitted).

The Petitioners object generally to all of University of Hawaii at Hilo’s, TMT International Observatory, LLC’s, and P.U.E.O., Inc.’s witnesses on the grounds that such witnesses are irrelevant, immaterial, and are unduly repetitious. The Petitioners reserve the right to raise objections when adequate offers of proof and preliminary statements are provided. In addition, such witnesses like David Callies are seemingly being called to provide legal opinions on compliance with the CDUP factors under the administrative rules, and such testimony would be clearly improper.

Respectfully submitted.

DATED: Honolulu, Hawaii, August 1, 2016.



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District, Island of Hawaii,)
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below, a true and correct copy of the foregoing document was served on the following parties by the means indicated:

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DATED: Honolulu, Hawaii, August 1, 2016.



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