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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
)
) MOTION TO STRIKE
A Contested Case Hearing Re) MOTION FOR PROTECTIVE
Conservation District Use Permit) ORDER FOR THE
(CDUP) HA-3568 for the Thirty Meter) HONORABLE DAVID Y. IGE,
Telescope at the Mauna Kea Science) SUZANNE CASE AND STANLEY
Reserve, Kahohe Mauka, Hamakua) ROEHRIG, FILED ON AUGUST 8,
District, Island of Hawaii,) 2016; MEMORANDUM IN SUPPORT
TMK (3) 4-4-015:009) OF MOTION; and CERTIFICATE OF
) SERVICE
)
_____)

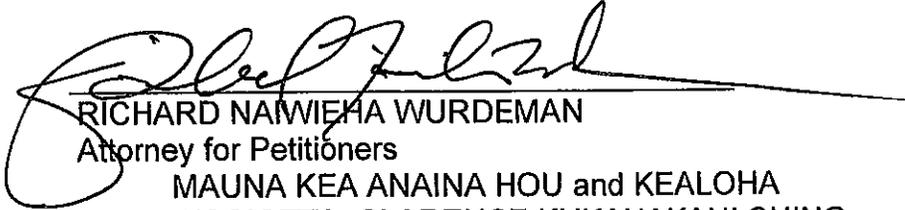
MOTION TO STRIKE MOTION FOR PROTECTIVE ORDER FOR THE HONORABLE
DAVID Y. IGE, SUZANNE CASE, AND STANLEY
ROEHRIG, FILED ON AUGUST 8, 2016

COMES NOW 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
"Petitioners"), by and through their counsel undersigned, and hereby moves for an

Order striking the Motion for Protective Order for the Honorable David Y. Ige, Suzanne Case and Stanley Roehrig, Filed on August 8, 2016. Not only have these individuals failed to follow the deadlines set by this Hearing Officer in these proceedings, but they have failed to request leave of this Hearing Officer to file this untimely motion.¹ In fact, they have not asked for any kind of leave to file the instant Motion at all.

This Motion is brought pursuant to Hawaii Administrative Rules ("HAR") §§ 13-1-12 and 13-1-34 and the Hearing Officer's Minute Order No. 13, filed on July 21, 2016. This Motion is also based on the Memorandum in Support of Motion and the authorities and arguments set forth therein, the records and files in the instant case, and any further evidence that may be adduced and arguments that may be presented at a hearing on the said Motion.

DATED: Honolulu, Hawaii, August 10, 2016.


RICHARD NAWIHA WURDEMAN
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

¹ Without waiving their objections and position, the Petitioners have not had a fair opportunity to be heard and to respond, in any event.

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
) MEMORANDUM IN SUPPORT
A Contested Case Hearing Re) OF MOTION
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)
_____)

MEMORANDUM IN SUPPORT OF MOTION

In the Hearing Officer's Minute Order No. 13, filed on July 21, 2016, this Hearing Officer set an August 1, 2016 deadline for objections to witness lists. Governor David Ige, Suzanne Case, and Stanley Roehrig were all named by the Petitioners on July 18, 2016 in their witness list. These witnesses were once again named by the Petitioners on August 1, 2016 in the reformatted witness list pursuant to the Minute Order No. 13 of this Hearing Officer. At no time on or before August 1, 2016 did these individuals raise any kind of objections, despite what presumably was the informing of Mr. Henderson, counsel for these individuals, by his colleagues in the Attorney General's who are sitting as advisors to this Hearing Officer, of the naming of these individuals as witnesses by the Petitioners,¹ until the filing of the instant Motion on August 8, 2016. No leave of the

¹ This is further evidence and reasons for the need for disqualification of these attorneys and the Petitioners add this as further justification to support their pending Motion to Disqualify BLNR's and Hearing Officer's Counsel, filed on July 18, 2016. These attorneys continue to act in a role of advocacy and in an adversarial role against the Petitioners. Mr. Henderson is also counsel for these same individual attorneys in the HRS Chapter 92F records requests that we have made of Board and the Hearing Officer's counsel and now Mr. Henderson is representing Governor Ige, Suzanne Case, and Stanley Roehrig, while his other clients, Mr. Wynhoff and Ms. China, sit in the same

Hearing Officer was ever sought to file the instant motion, nor have the Petitioners been given adequate time to address the motion, either.²

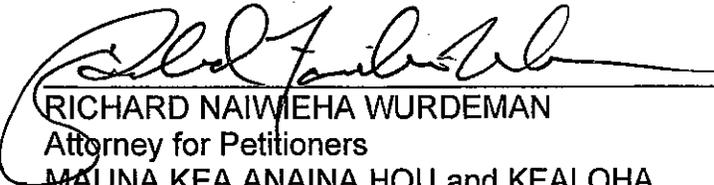
The Petitioners also reassert that new and independent counsel, including what is argued above and in footnote 1 herein, is required and that the Petitioners continue to be denied of their rights of due process and fundamental fairness. The Hawaii Supreme Court's written decision, regarding violations of due process of my clients, in this same subject matter regarding the challenge to the CDUP, needs to be followed. See Mauna Kea Anaina Hou v. Board of Land and Natural Resources, 136 Hawai'i 376, 363 P.3d 224, 237 (2015). We are here today before this Hearing Officer because my clients' due process were previously violated and the Hawaii Supreme Court required that my clients be given due process. The remand by the Hawaii Supreme Court was not about TMT International Observatory LLC now wanting a "voice" at the table years after the fact, when it intentionally and consciously chose to not intervene on appeal, nor is this remand about a newly formed LLC (P.U.E.O., Inc.) wanting a "voice," at the table, either. The Supreme Court never sent this case back on remand for any such purpose. The Supreme Court sent this case back for contested case hearing because my clients, who made timely requests for a contested case in February of 2011, were denied and deprived of due process.

room as advisors to this Hearing Officer and on this exact motion to boot. And further, this is why any "Chinese wall" argument for the Department of the Attorney General cannot and will not work as attorneys pretty clearly continue to consult with each other in their office and also have all kinds of cross representation. The Petitioners submit that the clear conflicts of interest of counsel are mind-boggling.

² Preliminarily, quasi-judicial immunity generally applies to being named as parties in lawsuits and not being called as witnesses. Judges, who have full (and not quasi) judicial immunity, can even be called as witnesses in proceedings.

The Petitioners respectfully request that this Hearing Officer strike the Motion for Protective Order for the Honorable David Y. Ige, Suzanne Case, and Stanley Roehrig, filed on August 8, 2016 and that new and independent counsel be required in these proceedings.

DATED: Honolulu, Hawaii, August 10, 2016.



RICHARD NAIWIEHA WURDEMAN
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
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STATE OF HAWAII

IN THE MATTER OF) Case No. BLNR-CC-16-002
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) CERTIFICATE OF SERVICE
A Contested Case Hearing Re)
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(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)
_____)

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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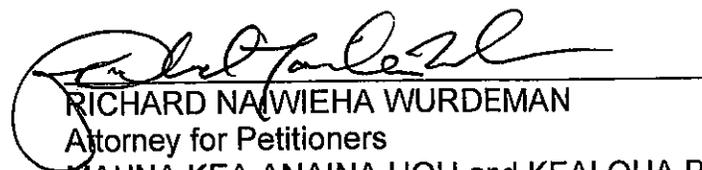
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DATED: Honolulu, Hawaii, August 10, 2016.



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Attorney for Petitioners

MAUNA KEA ANAINA HOU and KEALOHA PISCIOTTA;
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