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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, Kahohe 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 KAMAHANA KEALOHA: MOTION
DEMANDING REDRESS TO THE FACT
THAT WE ARE BEING RUSHED,
COERCED AND INTIMIDATED
THROUGH THIS PROCESS BY THE
HEARING'S OFFICER AND THROUGH
SILENCE AND VERBAL PRODDING AS
WELL AS THROUGH THE SILENCE
AND LACK OF ACTION OF THE
ATTORNEY GENERAL'S OFFICE [Doc-
190]; CERTIFICATE OF SERVICE**

**TMT INTERNATIONAL OBSERVATORY, LLC'S OPPOSITION TO KAMAHANA
KEALOHA: MOTION DEMANDING REDRESS TO THE FACT THAT WE ARE
BEING RUSHED, COERCED AND INTIMIDATED THROUGH THIS PROCESS BY
THE HEARING'S OFFICER AND THROUGH SILENCE AND VERBAL PRODDING
AS WELL AS THROUGH THE SILENCE AND LACK OF ACTION OF
THE ATTORNEY GENERAL'S OFFICE [Doc-190]**

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AND COASTAL LANDS

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

TMT International Observatory, LLC (“TIO”), by and through its undersigned counsel, hereby submits its Opposition to Kamahana Kealoha: Motion Demanding Redress to the Fact that We are Being Rushed, Coerced and Intimidated Through This Process by the Hearing’s Officer and Through Silence and Verbal Prodding as Well as Through the Silence and Lack of Action of the Attorney General’s Office [Doc-190] (“Motion”).¹

I. DISCUSSION

1. The Motion should be denied because it is untimely.

The deadline to file pre-hearing motions was 7/18/2016. See Minute Order No. 13 at 6 [Doc-115]. Mr. Kealoha did not file his Motion until 8/10/2016.² The Motion is therefore untimely and should be denied on that basis alone.

2. The Motion should be denied because it is not the responsibility of this Hearings Officer, the Board of Land and Natural Resources (“BLNR”), the Department of Land and Natural Resources (“DLNR”), or the deputy attorney generals assigned to this contested case to educate Mr. Kealoha on the rules and requirements of this contested case proceeding.

Mr. Kealoha is a party to this contested case proceeding and has been appearing pro se. The fact that Mr. Kealoha is appearing pro se, however, does not entitle him to preferential or special treatment. “Courts should not afford litigants special treatment simply because they are proceeding without the benefit of counsel.” Pinnacle Credit Servs., LLC v. Kuzniak, 2009 WL 581709 (Ct. App. Ohio 2009); see also Motoyama v. Hawaii, Dep’t of Transp., 864 F.Supp.2d 965, 975 (D. Haw. 2012) (“Pro se litigants must follow the same rules of procedure that govern

¹ It is not clear as to whether this Motion has been set for hearing on 8/29/2016. Nevertheless, TIO submits this Opposition in an abundance of caution.

² During the 8/5/16 hearings, this Hearings Officer granted Mr. Kealoha leave to re-file his “quo warranto, demand of jurisdiction” [Doc-161] as a motion. Mr. Kealoha did so on 8/8/16. See Kamahana Kealoha: Motion Invoking Quo Warranto, et al. [Doc-180]. This Hearings Officer did not grant Mr. Kealoha leave to file additional motions, including this Motion.

other litigants.”). Indeed, “if the court treats pro se litigants differently, ‘the court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel.’” Id. (citation omitted). In comparison, if a pro se litigant is held “to the same standards, and properly afforded . . . the same process as any other litigant[,]” he or she is not deprived of his or her due process rights. Id.

Based on the above, it is not the responsibility of this Hearings Officer, BLNR, DLNR, or the deputy attorney generals assigned to this contested case proceeding³ to provide Mr. Kealoha with “direction” or “guidance” regarding the rules and requirements of this contested case proceeding. See Motion at 2-3. Rather, it is incumbent upon Mr. Kealoha to educate and familiarize himself with the rules and requirements of this contested case proceeding. See Crawford v. Japan Airlines, 2008 WL 465604 at *2 (instructing pro se litigant to familiarize himself with the court’s rules). It is incumbent on Mr. Kealoha to determine how to, for example, draft a proper motion that meets the requirements of the Rules of Practice and Procedure, Title 13, Chapter 1 of the Hawai‘i Administrative Rules (“HAR”) (“Rules of Practice and Procedure”)⁴. It is also incumbent on Mr. Kealoha to present his own case and not expect this Hearings Officer to make his case for him.

³ The deputy attorney generals assigned to this case are here to advise this Hearings Officer. Their job is not to counsel Mr. Kealoha on the rules and requirements of this contested case proceeding. Their job is not to advise Mr. Kealoha on how to, for example, draft a proper motion.

⁴ The Rules of Practice and Procedure – i.e., the rules that govern this contested case proceeding – are readily available online at <http://dlnr.hawaii.gov/wp-content/uploads/2012/12/Ch13-1-Official-Rules.pdf>. Indeed, several of Mr. Kealoha’s fellow anti-TMT parties have cited to or discussed the Rules of Practice and Procedure in their pre-hearing motions. Clearly, those anti-TMT parties have had no problem obtaining the Rules of Practice and Procedure to educate and familiarize themselves with the rules and requirements of this contested case proceeding.

3. **The Motion should be denied because Mr. Kealoha's complaints about this contested case proceeding are baseless.**

Mr. Kealoha's complaints about this contested case proceeding are also baseless. For example, Mr. Kealoha complains that "although some of us submitted motions all were denied because the criteria and the formats were never given to us." Motion at 4. The only purported motion that was "denied" based on format was Mr. Kealoha's "quo warranto, demand of jurisdiction" [Doc-161]. This Hearings Officer granted Mr. Kealoha leave to file Doc-161 as a motion, which he subsequently did as Doc-180. The other motions were all denied on the merits. Mr. Kealoha also complains that no time for discovery [was] afforded [to] new parties." Motion at 6. However, discovery is not permitted in contested cases unless all parties agree. See HAR § 13-1-32.3. There is no such agreement between the parties. Mr. Kealoha also complains in capital letters: "HOW CAN A COMMON CITIZEN BE ABLE TO CITE CASE LAW? TELL ME THAT?" Motion at 10. Of course, Mr. Kealoha neglects to mention that in Doc-191, which was filed concurrently with this Motion, he cites to several case law. See generally Kamahana Kealoha: Invoking American law, et al. [Doc-191].

The most specious of Mr. Kealoha's complaints, however, is that because of the Hearings Officer's alleged "silence and aggressive verbal coercion and prodding . . . some parties are afraid to engage, ask questions or talk at all." Motion at 7. Every single one of the anti-TMT parties have spoken at the last two hearings. In fact, the significant majority of the last two hearings have been spent addressing the anti-TMT parties' questions and clarifications on motions, procedure, etc. Mr. Kealoha himself has demonstrated no hesitation in speaking during the last two hearings and, on several occasions, has interrupted this Hearings Officer.

Finally, no one is coercing or forcing Mr. Kealoha to be a party to this contested case. Indeed, Mr. Kealoha initially agreed to be a witness to this contested case, but later **chose** to be a

party even after this Hearings Officer advised all intervenors of the responsibilities of being a party. Mr. Kealoha could have remained as a witness and testified to his “cultural mores.” Motion at 12. Mr. Kealoha cannot now complain that he is unable to meet the responsibilities of being a party after this Hearings Officer specifically advised him of such responsibilities.

II. CONCLUSION

Based on the foregoing, and upon further argument to be presented at the hearing of the Motion, TIO respectfully submits that this Motion should be denied.

DATED: Honolulu, Hawaii, August 22, 2016.



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Contested Case Hearing Re Conservation
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BLNR Contested Case HA-16-02

CERTIFICATE OF SERVICE

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

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