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UNIVERSITY OF HAWAI'I AT HILO

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2016 SEP 30 P 3:37

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

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

Case No. BLNR-CC-16-002

THE UNIVERSITY OF HAWAI'I AT  
HILO'S **OBJECTION TO**  
**PETITIONERS MAUNA KEA ANAINA**  
**HOU, ET AL.'S REQUEST FOR**  
**FURTHER STATUS CONFERENCE**  
**AND/OR CONSIDERATION OF**  
**PROPOSED SCHEDULING, FILED**  
**SEPTEMBER 8, 2016 [DOC. 254];**  
EXHIBITS 1-3; DECLARATION OF  
COUNSEL; CERTIFICATE OF SERVICE

**THE UNIVERSITY OF HAWAI'I AT HILO'S OBJECTION TO PETITIONERS  
MAUNA KEA ANAINA HOU, ET AL.'S REQUEST FOR FURTHER STATUS  
CONFERENCE AND/OR CONSIDERATION OF PROPOSED SCHEDULING, FILED  
SEPTEMBER 8, 2016 [DOC. 254]**

Applicant UNIVERSITY OF HAWAI'I AT HILO ("University") submits this Objection to Mauna Kea Anaina Hou, Et. Al.'s request entitled *Petitioners Mauna Kea Anaina Hou, Et Al.'s Request for Further Status Conference and/or Consideration of Proposed Scheduling*, filed September 8, 2016 [Doc. 254] ("**Request**").

## I. INTRODUCTION

On September 8, 2016, Petitioners Mauna Kea Hou, Et Al. (“**Petitioners**”) filed the instant Request, asking that the Hearings Officer: (1) set September 30, 2016, or a reasonable time thereafter, as the deadline for the University and TMT International Observatory, LLC (“**TIO**”) to submit their opening briefs, witness lists, written direct testimony for each witness, exhibit lists, and exhibits; (2) set October 31, 2016, or a date similarly staggered from the University's and TIO's deadline, for all other parties, including Petitioners, to submit their opening briefs, witness lists, written direct testimony for each witness, exhibit lists, and exhibits; (3) set November 10, 2016 as the deadline for all parties to submit reply briefs, reply written testimony, reply exhibit lists, and reply exhibits; and (4) set evidentiary hearings some time after November 10, 2016, excluding dates in which Petitioners' counsel has scheduling conflicts. Request at 2. Petitioners' request for an additional month to file their hearing documents is baseless and has already been. As such, Petitioners' Request should be denied.

Petitioners further proposed that, given the holiday season, evidentiary hearings be scheduled between January 16, 2017 through January 27, 2017. Request at 3. On September 19, 2016—after Petitioners filed their Request—the Hearings Officer issued a Notice of Contested Case Hearing [Doc. 276] (“**Notice**”), pursuant to Hawai‘i Revised Statutes (“**HRS**”) § 91-9,<sup>1</sup>

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<sup>1</sup> HRS § 91-9 requires the notice of a contested case to include:

- (1) The date, time, place, and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;
- (4) An explicit statement in plain language of the issues involved and the facts alleged by the agency in support thereof; . . .
- (5) The fact that any party may retain counsel if the party so desires and the fact that an individual may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association.

informing the parties that the contested case hearing will commence on October 11, 2016. Notably, despite the title of the Notice, its conformity with HRS § 91-9, and the attached advertisement in the Star-Advertiser announcing the same, Petitioners' counsel currently seek clarification as to whether the October 11, 2016 date is the evidentiary hearing itself or merely a prehearing conference at which to set deadlines.

Petitioners' counsel's confusion, whether feigned or actual, is in keeping with the Petitioners' general disregard of the Hearings Officer's warnings regarding the hearing schedule and set deadlines. As Petitioners note in their Request, they have been on notice since July that the contested case hearing would be set in October. *See* Minute Order No. 13, filed July 21, 2016 [Doc. 115]. Yet, they inexplicably waited until the second week of September to alert the Hearings Officer that their counsel is unavailable for the month of October. Moreover, the sole reason for Petitioners requesting a later hearing date, namely their counsel's unavailability, is vague and unsupported. Contrary to the requirements of Hawai'i Administrative Rules ("HAR") § 13-1-34(a), Petitioners failed to attach any exhibits, affidavits, or declarations to the Request detailing their counsel's unavailability. Thus, not only is Petitioners' Request untimely, but it is also unjustified.

## **II. ARGUMENT**

As a preliminary matter, the University sees no cogent reason, nor do Petitioners provide any, for why deadlines to submit hearing documents should be staggered between the University and other parties. Petitioners have not demonstrated any need for the Hearings Officer to alter her practice of imposing the same deadline on all parties, much less with respect to Petitioners who participated in the previous contested hearing. Petitioners' request for an additional month by which to submit opening briefs, witness lists, written direct testimony for each witness,

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exhibit lists, and exhibits is unwarranted and should be denied.

Likewise, Petitioners' request to postpone evidentiary hearings until after November 10, 2016 should be denied as it is untimely and unsupported. Parties were informed in July via Minute Order that the evidentiary hearings would be scheduled in October and were instructed by the Hearings Officer to plan accordingly. *Id.* In that same Minute Order, the Hearings Officer set a deadline of July 18, 2016 by which all pre-hearing motions must be filed. *Id.* Although Petitioners' Request clearly indicates that they were aware of this order, they failed to heed both the Hearings Officer's caution to plan accordingly and the deadline by which to file a request to continue. *See* Ex. 1, June 17, 2016, Hrg. Trans. at 33 & 36. Petitioners offer no explanation why their Request was not filed by July 18, 2016, especially given Petitioners' counsel representation that his scheduling conflict "was set a number of months ago." Letter at 1.

Moreover, during the August 5, 2016 and the August 12, 2016 prehearing conference, the Hearings Officer reminded parties and their counsels that the evidentiary hearings will be held in October. *See* Ex. 2, August 5, 2016, Hrg. Trans. at 117, *see also* Ex. 3, August 12, 2016, Hrg. Trans. at 116. Although Petitioners' counsel was present at both conferences with presumably existing scheduling conflicts, Petitioners again failed to inform the Hearings Officer of the conflict or request a later date. *Id.* The records from both conferences are conspicuously devoid of any request to reconsider setting the hearing in October prior to September 2016. *Id.* In sum, Petitioners had months to object to holding the hearing in October but failed to do so until the instant Request just three weeks shy of October.<sup>2</sup> Petitioners provide no good cause for why it

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<sup>2</sup> The University notes that Petitioners' counsel, as an officer of the court, is obligated to "noti[fy] opposing counsel and, if appropriate, the court or other tribunal as early as possible

failed to file a prehearing motion for a continuance as soon as their counsel was aware that he would be unavailable in October. Petitioners' Request is therefore untimely and should be denied.

Additionally, HAR § 13-1-34(a) requires that "all motions . . . shall state the relief sought, and shall be accompanied by an affidavit, or declaration, or memorandum setting forth the grounds upon which they are based." Here, neither the Request nor the Letter contain any supporting exhibits, affidavits, or declarations. Aside from the bald statement that "outside of a couple days in late October, that are not continuous, [Petitioners' counsel] already has scheduling conflicts[,]" Petitioners provide no details or explanations regarding this suddenly disclosed unavailability. There is no supporting document or averment affirming Petitioners' claim that their counsel—despite having months of advance notice—is suddenly unavailable for the month of October. There is nothing verifying this scheduling conflict which apparently has existed for months, but is only now being raised. Petitioners have not provided the Hearings Officer with any record to consider or evidence to weigh, only a last-minute request for accomodation. As such, Petitioners' request should be denied.

### **III. CONCLUSION**

For these reasons, the Request should be denied.

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when scheduled meetings, hearings or depositions must be canceled or rescheduled." Haw. R. Sup. Ct. EX A-1 GDS PROF COURTESY AND CIVILITY 1.

DATED: Honolulu, Hawai'i, September 30, 2016.



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IAN L. SANDISON

TIM LUI-KWAN

JOHN P. MANAUT

Attorneys for Applicant

UNIVERSITY OF HAWAI'I AT HILO

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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF ) CASE NO. BLNR-CC-002  
)  
Contested Case Hearing Re )  
Conservation District Use )  
Application (CDUA) HA-3568 )  
For The Thirty Meter )  
Telescope at the Mauna Kea )  
Science Reserve, Ka'ohe )  
Mauka, Hamakua, Hawai'i )  
TMK (3)4-4-015:009 )  
----- )

SCHEDULING HEARING

Held on June 17, 2016, commencing at 12:50 a.m. at  
the Hilo State Office, Conference Rooms A, B and C,  
75 Aupuni Street, Hilo, Hawaii 96720.

BEFORE: Jean Marie McManus, CSR #156

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APPEARANCES:

JUDGE RIKI MAY AMANO, Hearing Officer  
JULIE CHINA, Deputy Attorney General  
WILLIAM WYNHOFF, Deputy Attorney General  
STEPHEN MICHAEL CAIN, Staff Planner  
TIM LUI-KWON, ESQ.  
JOHN P. MANAUT, ESQ.  
IAN L. SANDISON, ESQ.  
Attorneys for University of Hawaii  
RICHARD N. WURDEMAN, ESQ.  
Attorney for Mauna Kea Anaina Hou, et al



1 motion. I'll give you a deadline. My thinking is  
2 about two weeks for the prehearing motions to be  
3 filed with --

4 MR. WURDEMAN: Can we have a little more  
5 time than that, Judge? That's awfully quick.

6 HEARING OFFICER AMANO: How much time are  
7 you talking about?

8 MR. WURDEMAN: I was thinking 30 days.

9 HEARING OFFICER AMANO: Why do you need  
10 30 days for prehearing motion?

11 MR. WURDEMAN: Substantive motions dealing  
12 with the case or is there a distinction with other  
13 types of motion?

14 HEARING OFFICER AMANO: Only every  
15 prehearing motion I deal with, any kind of prehearing  
16 motion whether dispositive or not.

17 MR. WURDEMAN: I would respectfully ask for  
18 30 days. And will discovery be allowed --

19 HEARING OFFICER AMANO: July 18.

20 MR. WURDEMAN: Will discovery be allowed?

21 HEARING OFFICER AMANO: I don't know the  
22 status of your discovery now or -- there is no  
23 discovery from these contested cases, so I do not  
24 intend to allow that.

25 Motions deadline, all motions deadline no

1 later than July 18, 4:00 p.m.. Responses will be two  
2 weeks later. That takes you to August 1st. I'm  
3 looking to go set the hearing on Friday, August 5th.

4 I'm looking to set the hearing on Friday,  
5 August 5th, hearing on the motion. Then we will have  
6 a third prehearing conference to follow.

7 Based upon what's been said today, I'm  
8 going to set a deadline for the witness list already.  
9 It's untenable. And I want to know if we have  
10 duplicate witnesses; if there are objections. So we  
11 have a better handle on how many witnesses we're  
12 really going to have at the hearing.

13 MR. LUI-KWAN: That would be the witness  
14 list with the written --

15 HEARING OFFICER AMANO: Your witness list  
16 deadline is July 18th.

17 MR. LUI-KWAN: That's the list or actual  
18 testimony?

19 HEARING OFFICER AMANO: No, just the list.

20 MR. WURDEMAN: Would UH, as the Applicant,  
21 be submitting a list first and then 30 days after we  
22 submit our list?

23 HEARING OFFICER AMANO: No, everybody  
24 submits concurrently together July 18th, and you can  
25 submit responses by August 1st. If you have

1 objections or whatever, you can list that. I'll send  
2 you a copy of a form that I want you to use.

3 MR. WURDEMAN: That would just be the  
4 witness list, or we got to compile all the  
5 statements?

6 HEARING OFFICER AMANO: No, no, just the  
7 list.

8 You know, you're going to need addresses,  
9 contact information for these witnesses, because  
10 sometime people have the same name, so you want to  
11 show the addresses in case they're really different  
12 people.

13 So no discovery. And please, when you come  
14 to the next hearing on August 5th, bring your  
15 calendars with you, because I will be prepared. I  
16 will set the date for the proposed hearing, and I'll  
17 just do the best I can to scrape up three days a week  
18 for the next weeks and see how many we actually need.  
19 That will help in planning.

20 MR. LUI-KWAN: Judge, you also have  
21 schedules for exchanging of direct testimony?

22 HEARING OFFICER AMANO: We will set that up  
23 afterwards, but be prepared when you do your witness  
24 list to have those people ready to do statements,  
25 because you are not going to have a whole lot of time

1 to pull that together.

2 MR. WURDEMAN: If you're setting out  
3 proposed dates, could that just be done on  
4 August 5th? I mean, I have trial and arbitration  
5 schedules throughout the fall.

6 HEARING OFFICER AMANO: That's why I think  
7 we have to do it now. So I'm going to put out dates  
8 that I can, and on August 5th we can talk about it  
9 and we can try to check the venue, so that we don't  
10 get stuck -- so that we have a big enough room for  
11 everyone.

12 Any other questions for now? Otherwise  
13 I'll try to get the order out to be filed by Monday.

14 Yes, sir.

15 UNIDENTIFIED STATEMENT: Can I clarify?  
16 Motion's deadline July 18th by 4:00 p.m., responses  
17 by August 1st. Submit witness list by July 18th, and  
18 next motion hearing set for August 5th?

19 HEARING OFFICER AMANO: Correct,  
20 August 5th, 10:00 a.m.

21 UNIDENTIFIED SPEAKER: Did I miss anything?

22 HEARING OFFICER AMANO: No. Prehearing  
23 conference to follow.

24 Anybody got a house big enough for 200  
25 people? Just asking.

1 Mr. Kanaele.

2 MR. KANAELE: Make an oral objection to all  
3 of this and that we need to get the right information  
4 from the hearing officer so we know what this is all  
5 about so we can make it clear.

6 Just wanted to say out loud, the Judge  
7 didn't vacate the order, and things like, be more  
8 clear with the information.

9 HEARING OFFICER AMANO: The Supreme Court  
10 opinion stands. I don't do anything about that. It  
11 stands for all of us to read it and follow it. I  
12 have minute odds that have set out what I believe to  
13 be where we are right now.

14 And then, I hear you, and don't want to  
15 mislead anybody, but to me there is a legal standard  
16 that will be applying to the next hearing. And it  
17 deals with the permit -- it's Hawaii Administrative,  
18 HAR 13-5 is the applicable chapter -- HAR 13, chapter  
19 5.

20 MR. KANAELE: Just to be clear on the  
21 application of the permit --

22 HEARING OFFICER AMANO: The application of  
23 the permit whether it should be granted or not.  
24 That's my understanding.

25 MR. KANAELE: It was vacated, just making

1 sure it's going to be yes or no.

2 HEARING OFFICER AMANO: That's my  
3 understanding.

4 I do want to thank you all for your  
5 cooperation. I have a lot of aloha for everybody  
6 here. Thank you so much.

7 One thing real quick. If we are able to go  
8 to UH Hilo in their theater or auditorium that can  
9 seat a lot more people.

10 Are there any objections? I know they're a  
11 party. We tried not to go there out of respect, but  
12 I'm asking now. No objections. Okay, thank you very  
13 much.

14 (The proceedings adjourned at 1:36 p.m.)  
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CERTIFICATE

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HONOLULU )

I, JEAN MARIE McMANUS, do hereby certify:

That on June 17, 2016, at 12:50 p.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 17th day of June, 2016, in Honolulu, Hawaii.

/s/ Jean Marie McManus  
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JEAN MARIE McMANUS, CSR #156

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BOARD OF LAND AND NATURAL RESOURCES

STATE OF Hawai'i

IN THE MATTER OF ) CASE NO. BLNR-CC-002  
)  
Contested Case Hearing Re )  
Conservation District Use )  
Application (CDUA)HA-3568 )  
For The Thirty Meter )  
Telescope at the Mauna Kea )  
Science Reserve, Ka'ohe )  
Mauka, Hamakua, Hawai'i )  
TMK (3)4-4-015:009 )  
-----)

MOTIONS HEARING

Held on August 5, 2016, commencing at 10:05 a.m. at  
the YMCA Building, 300 West Lanikaula Street, Hilo,  
Hawai'i 96720.

BEFORE: Jean Marie McManus, CSR #156



## 1 APPEARANCES:

2 JUDGE RIKI MAY AMANO, Hearing Officer

3 JULIE CHINA, Deputy Attorney General  
4 WILLIAM WYNHOFF, Deputy Attorney General

5 STEPHEN MICHAEL CAIN, Staff Planner

6 TIM LUI-KWON, ESQ.

7 JOHN P. MANAUT, ESQ.

8 IAN L. SANDISON, ESQ.

9 Attorneys for University of Hawai'i

10 RICHARD N. WURDEMAN, ESQ.

11 Attorney for Mauna Kea Anaina Hou, et al

12

13 DOUGLAS ING, ESQ.

14 ROSS SHINYAMA, ESQ.

15 Attorneys For TMT International Observatory

16

17 LINCOLN S.T. ASHIDA, ESQ.

18

19 NEWTON CHU, ESQ.

20

21 For PUEO

22

23 LANNY SINKIN

24

25 Temple of Lono

26

27 HARRY FERGERSTROM

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29 RICHARD DeLEON

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31 MEHANA KIHAI

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33 C.M. KAHO'OKAHI KANUHA

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35 JOSEPH KUALII LINDSEY CAMARA

36

37 JENNIFER LEINA'ALA SLEIGHTHOLM

38

39 MAELANI LEE

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41 STEPHANIE-MALIA TABBADA

42

43 TIFFNIE KAKALIA

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45 GLEN KILA

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47 DWIGHT J. VICENTE

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49 BRANNON KAMAHANA KEALOHA

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51 CINDY FREITAS

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53 WILLIAM K. FREITAS

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1 a site visit on September 26th. We'll set out a plan  
2 for that including giving everyone an opportunity to  
3 participate where we go and when we go, meaning  
4 you're welcome to join, if you are a party or  
5 counsel.

6 The hearing -- so next week is critical  
7 because we're going to need to talk about witnesses.  
8 When we figure out how many witnesses are coming,  
9 then I'm going to be able to know how many days we  
10 need for hearing.

11 Right now looks like we will be able to do  
12 the hearing in October. So I can't give you the  
13 exact dates yet because I won't know how many days we  
14 need. So next Friday is critical. I should be able  
15 to give you an estimate and hopefully all the other  
16 details in place as well.

17 MR. LUI-KWAN: Do you want us to turn in a  
18 proposed itinerary for the site visit?

19 HEARING OFFICER AMANO: Not yet.

20 The question was whether or not I'm asking  
21 all of you or giving you a chance to submit a  
22 proposed itinerary for the site visit. I'll do that  
23 next week. I'll give plenty of time to do that.

24 Mr. Fergerstrom.

25 MR. FERGERSTROM: You denied two of my

CERTIFICATE

STATE OF Hawai'i )  
 ) SS.  
COUNTY OF HONOLULU )

I, JEAN MARIE McMANUS, do hereby certify:

That on July 5, 2016, at 10:05 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 5th day of August, 2016, in Honolulu, Hawai'i.

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JEAN MARIE McMANUS, CSR #156

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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF ) CASE NO. BLNR-CC-002  
 )  
 Contested Case Hearing Re )  
 Conservation District Use ) MOTIONS - Page 3  
 Application (CDUA)HA-3568 )  
 For The Thirty Meter ) PREHEARING - Page 109  
 Telescope at the Mauna Kea )  
 Science Reserve, Ka'ohe )  
 Mauka, Hamakua, Hawai'i )  
 TMK (3)4-4-015:009 )  
 ----- )

MOTIONS AND PREHEARING

Held on August 12, 2016, commencing at 2:02 p.m. at  
 the Hawaii Community College, Cafeteria, 1175 Manono,  
 Hilo, Hawai'i 96720.

BEFORE: Jean Marie McManus, CSR #156

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APPEARANCES:

JUDGE RIKI MAY AMANO, Hearing Officer

JULIE CHINA, Deputy Attorney General

TIM LUI-KWON, ESQ.  
JOHN P. MANAUT, ESQ.  
Attorneys for University of Hawai'i

RICHARD NAIWEHA WURDEMAN, ESQ.  
Attorney for Mauna Kea Anaina Hou, et al

DOUGLAS ING, ESQ.  
ROSS SHINYAMA, ESQ.  
Attorneys For TMT International Observatory

LINCOLN S.T. ASHIDA, ESQ.  
For PUEO

DAVID LOUIE, ESQ.  
For the Attorney General Doug Chin  
For the Department of the Attorney General  
Individual Deputy Attorneys General

LANNY SINKIN - Temple of Lono  
HARRY FERGERSTROM  
RICHARD DeLEON  
MEHANA KIHOI  
C.M. KAHO'OKAHI KANUHA  
JOSEPH KUALII LINDSEY CAMARA  
JENNIFER LEINA'ALA SLEIGHTHOLM  
STEPHANIE-MALIA TABBADA  
TIFFNIE KAKALIA  
DWIGHT J. VICENTE  
BRANNON KAMAHANA KEALOHA  
CINDY FREITAS  
WILLIAM K. FREITAS  
KALIKOLEHUA KANA ELE

1 HEARINGS OFFICER AMANO: Oh, yeah. I  
2 understand what you're saying, yes. Put the name in,  
3 tell why the guy got to come.

4 MS. KAKALIA: My dad.

5 HEARINGS OFFICER AMANO: Why your dad has  
6 to be there.

7 Okay, I'm not going to bring my Buick, I  
8 guess. So any other questions about that? That's  
9 the plan for the site visit.

10 When you actually -- you remember I said a  
11 few times, when we have the contested case hearing,  
12 we're going to be taking evidence. And evidence is  
13 what I'm going to be basing my decision on. That's  
14 it. The evidence is testimony given under oath. And  
15 documents received during the course of the hearing.

16 So for documents, to keep everything  
17 straight, and you can see how difficult it is, right?  
18 It's a challenge to keep documents straight. So when  
19 we're actually in the hearing and we want exhibits,  
20 we have to know who gives what. So I'm going to, in  
21 my minute order, assign you folks a letter.

22 So it will be, you know, maybe Mr. Lui-Kwan  
23 and UH-H, you folks can use the letter A, A1, A2, A3,  
24 to identify your documents.

25 Maybe Mr. Wurdeman from Mauna Kea Anaina

1 Hou will use B, so on and so forth. You can see  
2 we've been following a certain order. The same order  
3 that you folks filed your motions to intervene. I've  
4 kept it that way because I want to be absolutely fair  
5 to everybody, and the process needs to be respectful,  
6 I've tried to respect everyone. And it needs to be  
7 fair. So this is why we have done it, we set you out  
8 this way, given you a chance to present things in the  
9 same order. I'll be using the same order to give you  
10 exhibit assignments. Please look for the minute  
11 order, it will be in the back. It will say "exhibit  
12 list". It will say UH-H A; Mauna Kea Anaina Hou B;  
13 TIO, C; whoever next, Kihoi, D, whatever it is, okay.

14 And then when you get your exhibits,  
15 getting ready for the hearing, you don't have to do  
16 it before the 29th. We're talking about October,  
17 giving you a heads up.

18 When you mark your exhibits, you put at the  
19 bottom kind of big D1, D2, so when we are doing  
20 contested case hearing and referring to a document or  
21 referring to one document with just that one name, We  
22 don't have a bunch of D1's running around, we got  
23 only one. Does that make sense? All right.

24 So that's going to be in this next  
25 prehearing order.

1           And finally, I need to flush this out a  
2 little bit more, but I've already said direct  
3 testimony is going to be by written submissions.  
4 I've been thinking about that a lot, because I  
5 realize that some of your witnesses may not be the  
6 kind of witnesses who want to give you a submission,  
7 I get that. So I'm going to provide for a  
8 possibility of asking for exception to that rule. So  
9 we will set up a process for that as well.

10           But generally speaking, if you folks have  
11 testimony to give, so the way it works is, if I call  
12 the witness to the stand -- if I called Mr. Wurdeman,  
13 he would be my witness. My first questions to him  
14 would be considered direct testimony, direct  
15 examination.

16           Then Mr. Lui-Kwan has a chance to ask Mr.  
17 Wurdeman questions. That's cross-examination. But  
18 the cross-examination is limited to the scope of the  
19 direct examination. So if I ask Mr. Wurdeman only  
20 three questions, then the cross-examination is  
21 limited to those areas.

22           So when you do your direct testimony in  
23 written submission, the cross-examination that's  
24 going to happen is limited to that written  
25 submission. Okay? I'm trying to explain that more,



1 but I think you're getting the idea of what we're  
2 looking for. So most of the testimony -- I know some  
3 of you want to testify. If you can do it in written  
4 submission, that's what we are going to ask for.  
5 There will be a process to say -- however, don't be  
6 putting all your neighbors and everybody on the list  
7 and trying to get direct testimony, because if  
8 somebody wants to cross-examine on the direct, you  
9 are going to be responsible for bringing that person  
10 to the hearing, or else we're going to strike your  
11 direct testimony, okay? But we'll talk a little bit  
12 more about that and explain more.

13 Mr. Camara, right? If you don't mind.

14 MR. CAMARA: I'm Mr. Camara.

15 So I just wanted to clarify. So what if  
16 our cross-examination pertains to the validity of a  
17 particular witness?

18 HEARINGS OFFICER AMANO: You mean the  
19 credibility?

20 MR. CAMARA: The credibility.

21 HEARINGS OFFICER AMANO: That's fine.  
22 Credibility is always an issue. We are not going to  
23 go all over the place. It has to be limited and a  
24 narrow.

25 Again, I'm still looking at only October

1 for the contested case hearing. I don't know what  
2 days yet. I don't know what times yet. It's going  
3 to depend on the witnesses. And we have to deal with  
4 the witnesses. Who's going to be there on the 29th.  
5 There's a motion, and we'll be talking some more  
6 about who's going to be coming, and --

7 Yes, Mr. Sinkin, if it's limited to what  
8 I've just talked about because I've kept everybody  
9 later than I intended.

10 MR. SINKIN: Just to clarify. Documents  
11 that have already been put into the record with no  
12 letter assigned, they don't need to be resubmitted?

13 HEARINGS OFFICER AMANO: They will,  
14 absolutely. None of the things that have come in the  
15 motions are evidence, sorry. Mr. Ing?

16 MR. ING: I want to get a clarification.  
17 Will the minute order that you're going to issue  
18 cover the motions that you ruled upon on August 5th?

19 HEARINGS OFFICER AMANO: It's going to  
20 cover the prehearing conference. And the motions, I  
21 will also issue minute orders dealing with each  
22 motion. So they will be separate.

23 MR. ING: You'll issue one minute order for  
24 each --

25 HEARINGS OFFICER AMANO: For each motion.

1 MR. ING: And when do you expect to issue  
2 those? I'm just thinking about --

3 HEARINGS OFFICER AMANO: Let me think, how  
4 old am I? As soon as I can. I will work on it as  
5 soon as I can.

6 MR. ING: And the ones you took under  
7 advisement?

8 HEARINGS OFFICER AMANO: Yes, as well.  
9 Those well come out as way of minute order as one per  
10 motion. And I think it will be easier for everybody  
11 and the record.

12 Thank you everybody, take care.

13 (The proceedings adjourned at 5:12 p.m.)  
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CERTIFICATE

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HONOLULU )

I, JEAN MARIE McMANUS, do hereby certify:

That on August 12, 2016, at 2:02 p.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 12th day of August, 2016, in Honolulu, Hawaii.

-----  
JEAN MARIE McMANUS, CSR #156

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

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,  
Hamakua, Hawai'i, TMK (3) 4-4-015:009

CASE NO. BLNR-CC-16-002

DECLARATION OF COUNSEL;  
EXHIBITS "1" – "3"

**DECLARATION OF COUNSEL**

I, IAN L. SANDISON, declare:

1. I am a partner at the law firm of Carlsmith Ball LLP, counsel for UNIVERSITY OF HAWAI'I AT HILO, in the above-caption matter.
2. I am authorized and competent to testify to the matters set forth herein, and unless otherwise indicated, I make this declaration based upon my personal knowledge
3. Attached hereto as Exhibit 1 is a true and correct copy of pages 33 through and including 39 of the transcript prepared by Jean Marie McManus of the June 17, 2016 prehearing conference in the above captioned matter, presided over by the Honorable Riki May Amano.
4. Attached hereto as Exhibit 2 is a true and correct copy of pages 33 through and including 39 of the transcript prepared by Jean Marie McManus of the June 17, 2016 prehearing conference in the above captioned matter, presided over by the Honorable Riki May Amano
5. Attached hereto as Exhibit 3 is a true and correct copy of pages 115 through 121 of the transcript prepared by Jean Marie McManus of the August 12, 2016 prehearing conference in the above-captioned matter, presided over by Judge Riki May Amano.

This declaration is made upon personal knowledge and is filed pursuant to Rule 7(b) of the Rules of the Circuit Courts of the State of Hawai'i. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, September 30, 2016.



---

IAN L. SANDISON

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

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

Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

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DATED: Honolulu, Hawai'i, September 30, 2016.

A handwritten signature in black ink, appearing to be 'H. Sandison', written above a horizontal line.

---

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TIM LUI-KWAN  
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