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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
)
) PETITIONER MAUNA KEA ANAINA
A Contested Case Hearing Re) HOU, ET AL.'S OBJECTIONS
Conservation District Use Permit) TO SITE VISIT AND MINUTE
(CDUP) HA-3568 for the Thirty Meter) ORDER NO. 18; and
Telescope at the Mauna Kea Science) CERTIFICATE OF SERVICE
Reserve, Kaohe Mauka, Hamakua)
District, Island of Hawaii,)
)
)
)
)

PETITIONER MAUNA KEA ANAINA HOU, ET AL.'S OBJECTIONS
TO SITE VISIT AND MINUTE ORDER NO. 18

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 respectfully submits their Objections to the Site Visit and Minute Order No. 1, filed on September 19, 2016.

On August 17, 2016, and pursuant to the Hearing Officer's orders, the Petitioners field their Site Visit Recommendations (Doc 218). In the proposed recommendations, the Petitioners requested that areas be marked off with colored tape and also that helium balloons attached to the four corners of the proposed TMT site be included. Despite the Petitioners' requests, in Minute Order No. 18, filed on September 19, 2016, over a month after the proposals were submitted and one week before the site visit, the Hearing Officer included in the Minute Order a mere request to have either TMT International Observatory or the University of Hawaii at Hilo arrange for the use of a single red helium balloon at the proposed TMT Observatory site. In that the stated purpose for the site visit in then Minute Order was for the Hearing Officer "to see first-hand the location and observable impact of the Thirty-Meter Telescope project," the essential duplication of the logistics of the site visit in the first contested case hearing (a contested case hearing that was found to have violated due process when the cart was placed before the horse and the BLNR approved a CDUP even before the contested case hearings were held), was completely inadequate for a determination and appreciation of the observable impact of the project.

At the time of the submission of their proposed recommendations, the Petitioners were also unaware and of the belief that they would be meeting the Hearing Officer at the approved locations and would be ascending the Mauna in their own vehicles. This is a critical point in that the Petitioners' inability to follow their cultural and traditional practices in accessing the sacred Mauna and observing strict protocols precluded them from any participation in the site visit. In the Minute Order No. 18, it was ordered that all parties board hired tour vans in Hilo at the Hilo Bayfront Soccer Fields and that there were no unscheduled or impromptu stops unless specifically authorized by the Hearing Officer. One party of the group of the Petitioners was going to attempt to board a van just to be present at the Hale Pohaku at the 9,000 foot level, an unauthorized boarding spot, as there was no other way to observe the site visit. In any event, the Petitioners object with their inability to follow strict and necessary protocols in accessing the Mauna that precluded them from participation.

Finally, the Petitioners object to the continued presence of armed DLNR enforcement officers at the various hearings to date and any future hearings and also

what they assume will also occur at the site visit. The Petitioners seek the fair and impartial process in contested case hearings that the Hawaii Supreme Court ordered in *Mauna Kea Anaina Hou v. Board of Land and Natural Resources*. There has not to date been any finding of good cause and the need for such armed presence of DLNR officers in contested case proceedings in which they are participating. Not only is there a feeling of intimidation from the armed presence, but the Petitioners also are of the belief that the request for an armed presence and, with all due respect, the feeling by the Hearing Officer of the need for an armed presence is once gain a violation of the Petitioners' rights of due process of law in these proceedings.

DATED: Honolulu, Hawaii, September 25, 2016.



RICHARD NAWIEHA WURDEMAN
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Telescope at the Mauna Kea Science)
Reserve, Kahohe 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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DATED: Honolulu, Hawaii, September 26, 2016.



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