

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

Contested Case Hearing Re Conservation
District Use Application (CDUA) HA-3568
for the Thirty Meter Telescope at the Mauna
Science Reserve, Ka'ohē Mauka, Hāmākua,
Hawai'i, TMK (3) 4-4-015:009

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Case No. BLNR-CC-16-002

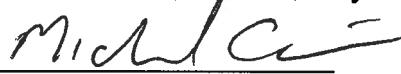
2016 MAY 26 P 3:25

NOTICE OF FILING OF AMANO FIFTH
SUPPLEMENTAL DISCLOSURE EXHIBIT 1;
DEPT. OF LAND AND NATURAL RESOURCES
STATE OF HAWAII COS

NOTICE OF FILING OF AMANO FIFTH SUPPLEMENTAL DISCLOSURE

Notice of hereby given that Hearing Officer Riki May Amano has filed a fifth disclosure statement related to the above subject Contested Case. The disclosure is attached as Exhibit 1.

Dated: Honolulu, Hawai'i, May 26, 2016



MICHAEL CAIN, Custodian of the Records
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawai'i

**JUDGE RIKI MAY AMANO (RET.)
1003 Bishop Street, Suite 1155
Honolulu, HI 96813**

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2016 MAY 26 P 3:25

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

May 25, 2016

Via Email to Suzanne.case@hawaii.gov

Suzanne D. Case, Chairperson
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Chair Case:

Re: **Contested Case Hearing In Re Thirty Meter Telescope CDUP Application;
Amano FIFTH Supplemental Disclosure**

I am submitting this Fifth Supplemental Disclosure related to my serving as the Hearing Officer in the above-referenced contested case hearing. Three independent disclosures are set out below. A Fourth Supplemental Disclosure was orally made at the pre-hearing conference on Monday, May 16, 2016.

Please consider this part of my duty to make ongoing disclosures as information continues to unfold in the course of this case.

Civil No. 14-1-1963-09 mediation. This morning I was advised by the case manager of Dispute Prevention & Resolution, Inc.¹ that Gary Takeuchi had called to advise he had learned of a mediation I was doing involving the University of Hawai'i at Manoa. Mr. Takeuchi was with Timothy Lui-Kwan at the pre-hearing conference on May 16th. He was inquiring about whether or not I had made a disclosure about the mediation, in the TMT matter.

I emailed Deputy Attorney General Julie China immediately to ask that she contact Tim Lui-Kwan to inquire about the relationship between UH Manoa and the application of UH-Hilo for the CDUA permit. Mr. Lui-Kwan told DAG China that "UH and UH-Hilo are part of the same system." On that basis, I disclose the following.

Approximately November 2015, I agreed to mediate Civil No. 14-1-1963-09 KTN, Ralf I. Kaiser and Brant Jones vs. The University of Hawai'i. The mediation is still active. The Complaint shows that this matter involves Plaintiffs seeking injunctive relief against the UH. Plaintiffs are represented by Stephen Tannenbaum, Esq. from the law firm of Bickerton Dang LLLP and the UH is represented by Richard Rand, Esq. from the law firm of Marr Jones Wang.

¹ I am on DPR's Panel of Neutrals and they administer all of my work as a mediator, arbitrator and neutral.

Plaintiffs are (1) seeking enforcement of commitments made to them by UH regarding establishing and funding a staff position, or (2) in the alternative, monetary damages for reimbursement “for their expenditures and the value of the opportunities and benefits they forwent and lost due to their reasonable reliance on Defendant’s broken promises...”

The essence of the dispute per the Complaint is that Professor Kaiser wrote a pre-proposal for a Keck Foundation grant in 2007 that would fund a faculty position to manage the W.M. Keck Research Laboratory in Astrochemistry located on the Manoa Campus. After receiving the full funding under the grant, Plaintiffs allege that UH failed to fund the faculty position.

The role of the Hearing Officer is diametrically different from that of a mediator. As a Hearing Officer, I am a fact-finder and decision-maker; in this matter, the Hearing Officer would be making Findings and Conclusions, and recommendations. A mediator helps parties reach an amicable agreement by facilitating discussions and negotiations. A mediator is not a factfinder or decision-maker.

My limited understanding of this BLNR matter is that UH-Hilo is an applicant for a CDUA permit that would allow the construction and operation of a thirty-meter telescope on Mauna Kea. I have no knowledge or belief that the Civil case and the BLNR case are in any way related to each other.

Under the circumstances, I do not believe any reasonable person would consider my service as a mediator in Civil No. 14-1-1963-09, to affect my impartiality as a hearings officer for this contested case hearing. If anyone has additional information that would change the circumstances of what I described above, I request that the information be provided to me as soon as possible.

I have no cases with the University of Hawai’i or any of its affiliates, other than what has been disclosed herein and previously in Amano Supplemental Disclosure submitted on March 31, 2016.

Patrick Kahawaiola`a. I recently perused a document titled “Perpetuating Unique Educational Opportunities, Inc.’s Motion to Intervene” (“Motion”). Attached to the Motion is a Declaration of Patrick Le`o Kahawaiola`a. I believe I am familiar with Mr. Kahawaiola`a through my service as a judge in the Third Judicial Circuit from 1992-2003. I do not have any social relationship with Mr. Kahawaiola`a that any reasonable person would consider likely to affect my impartiality as a Hearing Officer.

Newton Chu, Esq. and Lincoln Ashida, Esq. Newton Chu, Esq. and Lincoln Ashida, Esq. are noted to be counsels for the Motion. In the course of my work as an attorney since 1979, or as a judge in the Third Judicial Circuit from 1992-2003, and/or post-retirement work as a mediator/arbitrator/neutral from 2003 to the present, I have worked with attorneys Newton Chu, Esq. and Lincoln Ashida, Esq.; they are both with the law firm of Torkildson Katz Moore Hetherington & Harris; I have no ongoing cases with the law firm or the lawyers except that I have an ongoing mediation with Mr. Ashida that was disclosed previously in Amano

Supplemental Disclosure submitted to you on March 31, 2016. I do not have not have any social relationships with any of the identified lawyers or law firm that any reasonable person would consider likely to affect my impartiality as a mediator.

If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be 'Riki May Amano', with a long horizontal line extending to the right.

Judge Riki May Amano (ret.)

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Hāmakua, Hawai‘i, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Amano Fifth Supplemental Disclosure, dated May 25, 2016, was served upon the following parties via email and regular mail on May 26, 2016, addressed as follows:

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*Counsel for the petitioners Mauna Kea
Anaina Hou, Clarence Kukauakahi Ching,
Flores-Case ‘Ohana, Deborah J. Ward,
Paul K. Neves, and Kahea: The
Environmental Alliance*

Dated: Honolulu, Hawai‘i, May 26, 2016



Michael Cain
Department of Land & Natural Resources
State of Hawai‘i