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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 **OPPOSITION TO JOSEPH K.
L. CAMARA'S MOTION TO
RECONSIDER MINUTE ORDER 19,
FILED SEPTEMBER 28, 2016 [DOC.
291]; EXHIBIT "1"; DECLARATION OF
COUNSEL; CERTIFICATE OF SERVICE**

**THE UNIVERSITY OF HAWAI'I AT HILO'S OPPOSITION TO
JOSEPH K. L. CAMARA'S MOTION TO RECONSIDER
MINUTE ORDER 19, FILED SEPTEMBER 28, 2016 [DOC. 291]**

Applicant UNIVERSITY OF HAWAI'I AT HILO (the "University"), through its counsel,
Carlsmith Ball LLP, submits this *Opposition to Joseph K. L. Camara's Motion to Reconsider
Minute Order 19*, filed on September 28, 2016 [Doc. 291] ("**Motion for Reconsideration** or
"**Motion**").

I. DISCUSSION

By Mr. Camara's own admission, the Motion for Reconsideration is an attempt to re-

litigate arguments previously raised in his objections to PUEO's Proposed Minute Order Granting PUEO's Motion to Set Issues filed on September 09, 2016 [Doc. 256] ("**PUEO's Proposed Minute Order**"). The Hearing Officer rejected those arguments when she issued Minute Order No. 19 [Doc. 281]. In doing so, the Hearing Officer excluded the following issues raised by Mr. Camara's prior objection:

1. Native, indigenous, and human rights violations by the State of Hawaii, County of Hawaii, State Department of Land and Natural Resources (DLNR), University of Hawaii (UH) and the Thirty Meter Telescope (TMT) in attempts to develop the TMT on Mauna Kea. Also, violations that will occur if development is allowed to continue. This issue will be analyzed using State, Federal and international laws, statutes and agreements.
 - a. The United Nations Declaration on the Rights of Indigenous Peoples Articles 11, 12 and 25 are very pertinent to development of Mauna Kea.
 - b. Witnesses on my behalf have been involved in petitioning the UN and other international entities and can offer the judge invaluable insight into this process.
 - c. Violations of these rights are human rights violations[.]
 - d. Regardless of the Judges [sic] authority to rule on these issues, they are of critical importance to understanding indigenous rights. Making a decision in this case without an understanding [sic] these issues would not be advisable.
2. The impact of the TMT development, as well as the cumulative impact of astronomy development on the spiritual landscape of Mauna Kea and the traditional function of this sacred space.
 - a. The Native Hawaiian people and culture have been decimated since Western contact. We have lost much of the knowledge of the traditional functions of our sacred spaces. If we do not understand the function of these areas, how can we judge the impact development will have on them?
 - b. Witnesses on my behalf can share some insight to the traditional function and spiritual significance on Mauna Kea.
 - c. The September 26 site visit shows that those involved in arranging it have very little understanding of the cultural, spiritual significance of the summit area. This is an opportunity to learn.
3. Does the proposed TMT development constitute DESECRATION as defined by HRS 711-1107? And if so, would the issuance of a CDUP by the DLNR make them a party to said desecration?
 - a. Multiple protectors of Mauna Kea arrested last year have been found not

guilty in State courts because they were preventing desecration. This issue is pertinent to this case.

- b. Many have filed desecration charges against further development on Mauna Kea. This issue is as of yet unresolved.

Motion at 1-3.

Nonetheless, Mr. Camara files the instant Motion for Reconsideration, reiterating his demand that the above-listed issues be made part of the hearing. Under Hawai'i Administrative Rules (“HAR”) § 13-1-39(a), “the board may reconsider a decision it has made on the merits only if the party can show that: (1) new information not previously available would affect the result; or (2) a substantial injustice would occur.” As discussed below, Mr. Camara offers no new evidence, legal authority, or arguments that warrant reconsideration. Mr. Camara’s decision to focus his preparation on issues of international and criminal law that are plainly beyond the scope of the Board’s jurisdiction was a strategic choice that does not give rise to a “substantial injustice.” Because it fails to meet either prong of HAR § 13-1-39(a), the Motion for Reconsideration should be denied.

A. The Motion Fails to Present Any New Information That Was Not Previously Available

A dissatisfied litigant may not use a motion for reconsideration simply because it does not like a ruling and wants an additional opportunity to sway the tribunal. *See Teamsters Local 617 Pension & Welfare Funds v. Apollo Grp., Inc.*, 282 F.R.D. 216, 232 (D. Ariz. 2012). Rather, a motion for reconsideration is “limited in scope,” and “should be sparingly employed, only where unusual circumstances prevail.” *Cho v. State*, 115 Hawai'i 373, 384, 168 P.3d 17, 28 (2007); *Gossinger v. Ass'n of Apartment Owners of the Regency Ala Wai*, 73 Haw. 412, 426, 835 P.2d 627, 634-35 (1992). According to the Hawai'i Supreme Court, “the purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not

have been presented during the earlier adjudicated motion.” *Cho*, 115 Hawai‘i at 384, 168 P.3d at 28 (citing *Sousaris v. Miller*, 92 Hawai‘i 505, 513, 993 P.2d 539, 547 (2000)). A motion for reconsideration may not be used to relitigate old matters or raise new arguments that a party could have or should have made during the pendency of the previous motion. *Id.*

At the August 29, 2016 pre-hearing conference, the Hearing Officer considered PUEO’s Motion to Set the Issues, filed on July 18, 2016 [Doc. 99] (“**Motion to Set Issues**”) and various related pleadings by other parties. At that pre-hearing conference, the Hearing Officer acknowledged that laying out all the issues and non-issues would benefit everyone in this proceeding. *See* Ex. 1, 08/29/16 Tr. at 83:5-83:13. Accordingly, the Hearing Officer ordered PUEO to prepare additional document to address all issues and non-issues to be heard in the contested case. *Id.* at 83:14-83:19. All parties would have a chance to respond to PUEO’s proposal, *see id.* at 91:11-91:19, and Mr. Camara did, in fact, object to PUEO’s proposed order and proposed several other issues involving international and criminal law. *See* Mr. Camara’s *Response to Perpetuating Unique Educational Opportunities Inc.’s Proposed Minute Order Granting Perpetuating Unique Educational Opportunities Motion to Set the Issues*, filed on September 19, 2016 [Doc. No. 269] (“**Camara Response**”). After careful consideration of PUEO’s proposed order and the parties’ responses thereto, the Hearing Officer issued Minute Order No. 19, which *did not* include any of the issues raised in the Camara Response. *See* Minute Order No. 19 at 4-5.

Minute Order No. 19 expressly states that the Hearing Officer considered the Camara Response. Minute Order No. 19 at 3. By his own admission, Mr. Camara’s Motion for Reconsideration of Minute Order No. 19 does not present any new information, but instead repeats, verbatim, the issues presented in what was “filed in doc 269,” *i.e.*, the Camara Response.

Therefore, Mr. Camara has provided no new arguments that could not have been raised previously, and the Hearing Officer should reject Mr. Camara's attempt to relitigate old matters. *See Cho*, 115 Hawai'i at 384, 168 P.3d at 28.

B. Denying the Motion for Reconsideration Will Not Result in Substantial Injustice

The Motion for Reconsideration should also be denied because no substantial injustice will result to Mr. Camara if it is denied.

Mr. Camara's Motion asserts a number of claims that are addressed by the second prong of the Board's reconsideration rule, that: (1) Minute Order No. 19 gives a single party the authority to set issues in this case; (2) Minute Order No. 19 does not give satisfactory reasoning as to why Mr. Camara's issues will not be considered; (3) Mr. Camara and his witnesses have spent considerable time and effort preparing testimony for issues that will not be considered in this case and would therefore have to revise testimony in an unreasonable time frame to be considered relevant; and (4) regardless of whether or not the Hearing Officer has authority to rule on these issues, they are relevant to the impact of the TMT project. Motion at 1, 3. Each of these assertions is addressed in turn.

1. Minute Order No. 19 Does Not Give a Single Party the Authority to Set Issues in This Case.

First, Minute Order No. 19 does not give a single party the authority to set issues in this contested case, but does just the opposite.

On July 18, 2016, the motions deadline set by the Hearing Officer, PUEO filed its Motion to Set the Issues. The deadline to file responses to all motions filed on July 18, 2016 was August 5, 2016. Various parties filed responses to the Motion to Set issues. *See Docs.* 119, 140, 152, 164, 186, 195, 196, 210, 222, and 242. Although he had the opportunity to do so at an earlier date, Mr. Camara did *not* file any such response to the Motion to Set Issues.

As stated above, the Hearing Officer gave the parties another chance, after the motions and response deadlines, to comment on or propose issues to be heard at the hearing. *See* Ex. 1 at 83:14-83:19, 91:11-91:19. Mr. Camara's first and only response to the Motion to Set Issues is the Camara Response, filed on September 19, 2016, more than two months after the motions deadline and a month and half after the response deadline, to PUEO's Proposed Minute Order. Five parties (including Mr. Camara) filed responses to PUEO's Proposed Minute Order. *See* Docs. 266, 267, 269, 270, and 275. Furthermore, Minute Order No. 19 provides that the Hearing Officer explicitly considered the Camara Response. Minute Order No. 19 at 3. Therefore, it is clear that no one party had the authority to set the issues and non-issues in this case.

2. The Hearing Officer Has the Authority to Exclude Issues That Are Immaterial, Duplicative, or Beyond Her Jurisdiction.

Second, Mr. Camara's argument that the Hearing Officer failed to provide adequate reasoning for her decision misapprehends the Hearing Officer's authority. HAR § 13-1-36(a) gives the Hearing Officer the discretion to set and limit the issues "as may expedite orderly conduct and disposition of the proceeding as permitted by law." In other words, the Hearing Officer has the power to narrow the issues solely to those needed to decide the issue before her—*i.e.*, whether to approve the Conservation District Use Application ("CDUA"). Inherent in that authority is the power to exclude all other issues that are immaterial, duplicative, or beyond her jurisdiction. No further reasoning is required. To the extent Mr. Camara disagrees with the Hearing Officer's ruling, the burden is on Mr. Camara—not the Hearing Officer—to provide *new evidence or arguments that could not have been raised previously to support his position.* *See* HAR § 13-1-39(a).

3. Mr. Camara is Not Prejudiced by Means of Spending Time on Issues That Will Not be Decided in This Contested Case.

Third, Mr. Camara asserts that he and his witnesses have spent considerable time and

effort preparing testimony for issues that will not be considered in this case and would therefore have to revise testimony in an unreasonable time frame to be considered relevant. Motion at 3. Any such time spent on these issues was done is at his own risk.

At the August 29, 2016 pre-hearing conference, the Hearing Officer stated “[PUEO’s] motion was filed July 18th, so we’re like five, six weeks down the road. There’s certainly ample time for everyone to have thought about these issues, short of simply saying to you, no.” Ex. 1 at 62:7-62:11. Mr. Camara had months to consider what issues are relevant to this case and had at least one clear indication, by way of an order, that some of his proposed issues might not be considered. *See* Minute Order No. 14 [Doc. 124]. Furthermore, the “**Eight Criteria**” for evaluating the CDUA—which incorporates the policy concerns of the public trust doctrine, Article XII, section 7 of the Hawai‘i Constitution, and *Ka Pa‘akai o Ka ‘Āina v. Land Use Comm’n*—are set forth in § 13-5-30(c). The parties have known since before these proceedings began that the Eight Criteria would be a critical issue in this contested case hearing. If Mr. Camara has failed to prepare for those issues, that is a problem of his own making, and granting reconsideration to include even more issues in this case would do nothing to solve that problem.

To the extent Mr. Camara has focused his efforts on issues that are not part of this case, the rulings in this proceeding so far have been clear that issues over which the Board does not have subject matter jurisdiction will not be considered. *See id.* Mr. Camara chose not to respond to the Motion to Set Issues until his September 29, 2016 filing and therefore took the risk that waiting until such a late date would not be enough time to vet his proposed issues. Accordingly, any substantial injustice to Mr. Camara on timing was done of his own accord.

4. Omitting Mr. Camara’s Proposed Issues Will Not Cause Substantial Injustice.

Mr. Camara’s last point, that regardless of whether or not the Hearing Officer has

authority to rule on these issues, they are relevant to the impact of the TMT project, acknowledges that his proposed issues may not be properly before the Hearing Officer in this proceeding. Mr. Camara is correct – his proposed issues 1 and 3 are not proper issues in this contested case.

Mr. Camara’s proposed issue 1 involves claims under international law and his proposed issue 3 involves claims under Hawai‘i’s penal code – such matters are not properly before the Hearing Officer. The Board has jurisdiction only over those matters delegated to it by the Legislature. Those matters do not include matters of international law or criminal law.¹

Mr. Camara’s proposed issue 2 raises issues that are within the scope of the issues set forth in Minute Order No. 19; and he will be able to present relevant evidence on these issues so long as it remains within the scope of the issues set forth in Minute Order No. 19. Therefore, there is no reason to grant the Motion for Reconsideration as to proposed issue 2.

II. CONCLUSION

The Hawai‘i Supreme Court has expressed its concern for the abuse of motions for reconsideration that merely ask a court to rehear matters of a purely repetitive nature which “necessarily result in delay and wasted effort by court and counsel.” *Gossinger v. Ass’n of Apt. Owners of the Regency of Ala Wai*, 73 Haw. 412, 835 P.2d 627, 634 (1992); *see also K.M. Young*

¹ *See* Hawai‘i Revised Statutes § 183C-3 (Powers and duties of the board and department); *see also Morgan v. Planning Dep’t, Cnty. of Kauai*, 104 Hawai‘i 173, 184, 86 P.3d 982, 993 (2004) (“An administrative agency can only wield powers expressly or implicitly granted to it by statute. However, it is well established that an administrative agency’s authority includes those implied powers that are reasonably necessary to carry out the powers expressly granted.”) (citations and quotation marks omitted); *Public Util. Comm’n of Texas v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 315 (Tex. 2001) (“The basic rule is that a state administrative agency has only those powers that the Legislature expressly confers upon it.”); *D.A.B.E., Inc. v. Toledo-Lucas Cnty. Bd. of Health*, 96 Ohio St.3d 250, 773 N.E.2d 536, 545-46 (2002) (providing that a while an agency’s grant of power may be express or implied, “the limitation put upon the implied power is that it is only such as may be reasonably necessary to make the express power effective”).

& Assocs., Inc. v. Cieslik, 4 Haw.App. 657, 667, 675 P.2d 793, 801 (1983). Mr. Camara's Motion for Reconsideration falls into this category and should therefore be denied as he does not present any new information and denying the Motion for Reconsideration may be done without any substantial injustice to the movant.

DATED: Honolulu, Hawai'i, October 3, 2016.



IAN L. SANDISON
for TIM LUI-KWAN
JOHN P. MANAUT

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

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 29, 2016, commencing at 2:00 p.m., at
 Hawaii Community College Cafeteria, 1175 Manono,
 Hilo, Hawaii 96720.

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JUDGE RIKI MAY AMANO, Hearing Officer

3 JULIE CHINA, Deputy Attorney General

4 TIM LUI-KWON, ESQ.

5 JOHN P. MANAUT, ESQ.

6 IAN L. SANDISON, ESQ.

7 Attorneys for University of Hawai'i

8 RICHARD N. WURDEMAN, ESQ.

9 Attorney for Mauna Kea Anaina Hou, et al

10 DOUGLAS ING, ESQ.

11 ROSS SHINYAMA, ESQ.

12 Attorneys For TMT International Observatory

13 LINCOLN S.T. ASHIDA, ESQ.

14 For PUEO

15

16 LANNY SINKIN

17 Temple of Lono

18 HARVEY HENDERSON, ESQ.

19 Deputy Attorney General

20 For Governor Ige, Chair Suzanne Case

21 and Stanley Roehrig

22

23 HARRY FERGERSTROM

24 MEHANA KIHOI

25 C.M. KAHO'OKAHI KANUHA

JOSEPH KUALII LINDSEY CAMARA

JENNIFER LEINA'ALA SLEIGHTHOLM

TIFFNIE KAKALIA

DWIGHT J. VICENTE

CINDY FREITAS

WILLIAM K. FREITAS

KALI KANAELE

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22

23

24

25

1 is to leave that to the parties today to make a
2 suggestion. I heard you say earlier you want this
3 set today before we leave here, you want the issues
4 identified. You're running the show, Judge, but
5 perhaps asking the other parties what issues they
6 feel are germane.

7 HEARINGS OFFICER AMANO: Your motion was
8 filed July 18th, so we're like five, six weeks down
9 the road. There's certainly ample time for everyone
10 to have thought about these issues, short of simply
11 saying to you, no. I would like to hear the
12 proposals.

13 Let me ask you why the Native Hawaiian
14 traditional and customary practices should be issue
15 in this contested case hearing?

16 MR. ASHIDA: I think because of what the
17 Supreme Court said in the Ka Pa'akai O Ka'aina case.
18 They made it clear that those issues are of
19 importance, Your Honor, in the State of Hawaii, and
20 frankly, you know, a lot of the intervention that
21 PUEO based its request to you on, why we should be a
22 party admitted into this contested case, was premised
23 on that. And we believe that those are germane
24 issues and they are relevant issues.

25 HEARINGS OFFICER AMANO: And why is TMT

1 forked road that doesn't make any sense.

2 The whole idea of identifying the issues is
3 so that we are on the same page.

4 MR. ASHIDA: Right.

5 HEARINGS OFFICER AMANO: And the idea of
6 laying out these contested case issues is a good one,
7 but given what we've heard over the last couple of
8 months by way of prehearing motions, and that's
9 appropriate to have raised them then, I do think that
10 the granting of your motion needs to articulate all
11 the issues and exclude those issues that are not
12 going to be addressed in this contested case hearing,
13 just for clarity, for everyone.

14 So I'm going to ask you to prepare an
15 additional document that would be by way of a
16 proposal for the issues to be addressed in the
17 contested case hearing, and issues that are not going
18 to be addressed. And if you'll file that as a
19 document number and we'll set up a process for it.

20 MR. ASHIDA: All right. Deadline.

21 HEARINGS OFFICER AMANO: How much time do
22 you think you might need?

23 MR. ASHIDA: How much time is Your Honor
24 willing to give me?

25 HEARINGS OFFICER AMANO: Well, I'm not in a

1 rush, but I want to be reasonable.

2 Next Tuesday sounds great or not?

3 MR. ASHIDA: Is there a date that sounds
4 even better than that?

5 HEARINGS OFFICER AMANO: Is there a date
6 that sounds better to you? Next Tues is
7 September 6th.

8 MR. ASHIDA: Any possibility to have to the
9 end of next week?

10 CHAIRPERSON AMANO: Of course. So that
11 date is --

12 MR. ASHIDA: Friday the 9th. Is that
13 correct? Friday is the 9th.

14 HEARINGS OFFICER AMANO: Okay, and we'll
15 give everyone a chance to respond by the 19th. And
16 thereafter, I will issue the order.

17 MR. ASHIDA: All right, thank you.

18 HEARINGS OFFICER AMANO: Mr. Wurdeman.

19 MR. WURDEMAN: May I be heard?

20 On your Public Trust Doctrine question, at
21 136 Hawaii 407, which was Justice Pollack's
22 concurring opinion. And in the Mauna Kea Anaina Hou
23 decision, he states that the public Trust Doctrine
24 under the Hawaii Constitution and the principles that
25 it embodies applies to the conservation land, the

1 summit of Mauna Kea involved in this case. This
2 conclusion and supported by the plain language of
3 Article XI, Section 1, historical context under which
4 this provision was ratified in this court's
5 precedence. That's -- just to be clear that's what
6 I'm referring to.

7 HEARINGS OFFICER AMANO: Okay, thank you.
8 I appreciate that.

9 Mr. Sinkin, you don't have any response to
10 any of these motions?

11 MR. SINKIN: I would direct your attention,
12 Your Honor, to Document 119 Temple of Lono's
13 opposition to PUEO to set the issues.

14 HEARINGS OFFICER AMANO: Thank you very
15 much. Why didn't I have that here?

16 MR. SINKIN: I don't know.

17 HEARINGS OFFICER AMANO: Because it's the
18 first one. Very good. I apologize.

19 MR. SINKIN: That's quite all right.

20 HEARINGS OFFICER AMANO: Go ahead.

21 MR. SINKIN: Your Honor, thinking about the
22 issues for this case we have come up with a list of
23 about 20, and I'm happy to walk through them one at a
24 time.

25 HEARINGS OFFICER AMANO: What's different

1 from what you've already heard?

2 MR. SINKIN: In our story for this case we
3 want to tell the story of the traditional faith and
4 what it has experienced in this history of oppression
5 starting back in the 1820s. And what that means
6 about the impact of this additional act of destroying
7 an area on the mauna on Mauna Kea in terms of a
8 long-term history of oppression.

9 HEARINGS OFFICER AMANO: I set up a process
10 so Mr. Ashida will do his proposal by the 9th, and
11 you of course would have ten days to address, add or
12 subtract or whatever you want to do in terms of your
13 issues. And then I will go ahead and make a decision
14 as I draft the order.

15 MR. SINKIN: I will note for the record
16 that everybody else got to list their issues, but we
17 are to wait until you see his --

18 HEARINGS OFFICER AMANO: I asked you a
19 specific question. The specific question was what
20 additional issues do you have that haven't been
21 discussed here.

22 MR. SINKIN: I was starting to list them.
23 I don't believe the issue of the historical
24 oppression of traditional faith was mentioned by
25 anybody.

1 HEARINGS OFFICER AMANO: Okay, so that's
2 number one.

3 MR. SINKIN: That's one.

4 HEARINGS OFFICER AMANO: Okay.

5 MR. SINKIN: Let me just go through and
6 skip a few here.

7 The fundamental practices of the faith also
8 are going to be an issue that we want clarity on.
9 There's a great deal of confusion in the community
10 and in general and in this proceeding as to what are
11 the fundamental guidance of traditional faith, and we
12 want to make those clear in our presentation.

13 HEARINGS OFFICER AMANO: Well, it's your
14 opinion of what that is, and others --

15 MR. SINKIN: Not my opinion, the
16 practitioners' explaining to you what they're
17 practice is. It's not my opinion at all.

18 HEARINGS OFFICER AMANO: So others will
19 have their own testimonies that you're saying there's
20 confusion coming from where?

21 MR. SINKIN: We see it on a daily basis,
22 Your Honor. That's a long conversation. We want to
23 present the picture of the history of what's going
24 on, and that history includes --

25 HEARINGS OFFICER AMANO: The reason I'm

1 saying this is because you can raise that as an
2 issue, and if I choose or decide that that's
3 appropriate, then fine. But what I'm hearing you
4 say -- if that's an issue for the contested case
5 hearing, it's going to be an issue for everyone to be
6 able to put forth their evidence.

7 MR. SINKIN: Of course.

8 HEARINGS OFFICER AMANO: And so if that's
9 not consistent or differs -- I'm not saying either
10 which way -- I think I'm hearing from you that that
11 might be different. But maybe I'm misunderstanding
12 what you're saying.

13 MR. SINKIN: Now, I'm not understanding
14 what you saying what might be different.

15 HEARINGS OFFICER AMANO: The testimony
16 about what these traditional practices are.

17 MR. SINKIN: We will present what the
18 Temple of Lono's perspective is on traditional
19 practices of Hawaiian faith and others can present
20 whatever they want.

21 HEARINGS OFFICER AMANO: Got it.

22 MR. SINKIN: I think that it was covered,
23 the mismanagement of the mountain I think was covered
24 in other people's identification of issues.

25 We would like to also include evidence of

1 alternatives available to the current sites. This is
2 not the only place this telescope could be built and
3 that's relevant to assessing whether it has an impact
4 on an undue burden on the traditional faith if it has
5 an ability to place the telescope somewhere else.

6 So we would like to present evidence on the
7 availability of alternative sites for the telescope.

8 And I know I've spoken about this before,
9 I'll just touch on it briefly. The approach we're
10 taking on the kingdom issues is that there have been
11 decisions made up the road all the way to U.S.
12 Supreme Court that we think are in error, and that we
13 would like to develop a record by which we can
14 challenge those decisions and see if we can get a
15 reversible of the earlier rulings. And we can't
16 recreate that record unless we can create the
17 evidence in the record that the kingdom still exists,
18 that the kingdom has a government. The government
19 functions, and that for all of those kinds of reasons
20 the kingdom has rights that are not being recognized
21 in this proceeding.

22 We understand that you're bound by previous
23 case law, Supreme Court rules, all those things, but
24 we want to overturn those or get reversal of those by
25 a higher court. We have to have the opportunity to

1 create a record on which they can make reversals as
2 noted in other pleadings, there were times when
3 slaves were not allowed to be citizens, black people
4 were not allowed to be citizens. There were times
5 when Japanese-Americans were put in interment camps.
6 There were times in our history of U.S. things that
7 happened were not right that were later corrected by
8 the people who are responsible for the error.

9 We want to create that opportunity for the
10 kingdom to come before the courts that have decided
11 these issues before, and say you made an error in how
12 you decided. Here's new evidence that you've never
13 seen before. New arguments that you've never heard
14 before.

15 And based on that new presentation, we
16 would like you to re-evaluate whether you can reverse
17 the earlier rulings. In order to do that, we have to
18 present the evidence that the kingdom does present
19 and has a working government.

20 So we would like those to be issues heard
21 in these proceedings.

22 And I think the final one, we have evidence
23 that the TMT has basically hidden from public view
24 the military uses of telescopes and that should have
25 been part of everything that they have, impacts on

1 the State of Hawaii and the citizens of Hawaii making
2 that a military facility. And we would like to
3 present evidence on the military uses on that
4 telescope.

5 So those are our issues.

6 HEARINGS OFFICER AMANO: Thank you.

7 So I'll await Mr. Ashida's submission by
8 the 9th. Submit it as a document, please. And these
9 would be the proposed issues, and also proposed
10 non-issues.

11 And you have until 19th to respond. And I
12 will thereafter follow with a decision that will set
13 out the issues. And I think that concludes --

14 MR. CAMARA: I'm Joseph Camara. I just
15 wanted to clarify. So will all parties be able to
16 get on -- to add things that we think are pertinent
17 to this things or just the people who --

18 HEARINGS OFFICER AMANO: No, everyone
19 respond to the proposal.

20 MR. CAMARA: Thank you very much.

21 HEARINGS OFFICER AMANO: Mr. Fergerstrom.

22 MR. FERGERSTROM: When I came in this
23 afternoon, I presented you with two documents, and I
24 brought to your attention -- that they had not
25 been -- at least the first one was not put into the

CERTIFICATE

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STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on August 29, 2016 at 2:00 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 29th day of August, 2016, in Honolulu, Hawaii.

/s/ Jean Marie McManus
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

DECLARATION OF COUNSEL

I, LINDSAY N. MCANEELEY, 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 62, and 83 through and including 91 of the transcript prepared by Jean Marie McManus of the August 29, 2016 prehearing conference in the above captioned matter, presided over by the Honorable 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, October 3, 2016.


LINDSAY N. MCANEELEY

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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