

**BOARD OF LAND AND NATURAL RESOURCES**

**STATE OF HAWAII**

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`ohe Mauka, Hamakua, Hawai`i )  
TMK (3) 4-4-015:009 )  
)  
)  
\_\_\_\_\_ )  
**Certificate of Service**

CASE NO. BLNR-CC-16-002  
Minute Order No. 23  
(Order Denying Temple of Lono's  
Motion for Partial Summary  
Judgment (Doc. 78))

**MINUTE ORDER NO. 23**  
**(Order Denying Temple of Lono's Motion for  
Partial Summary Judgment (Doc.78))**

On August 5, 2016, a hearing on the Temple of Lono's Motion for Partial Summary Judgment (Doc. 78) ("Motion") was held in Hilo, Hawai`i at the YMCA, 300 W. Lanikaula Street.

The following persons were present:

Richard N. Wurdeman, Esq., Attorney for Mauna Kea Anaina Hou, et al. for and with Kealoha Pisciotta, Clarence K. Ching, Deborah Ward, Paul Neves, Pualani Case, E. Kalani Flores and Keomailani Van Gogh  
Timothy Lui-Kwan, Esq.; John Manaut, Esq.; and Ian Sandison, Esq.; Attorneys for the University of Hawaii-Hilo ("UHH")  
J. Douglas Ing, Esq. and Ross Shinyama, Esq., Attorneys for TMT International  
Lincoln Ashida, Esq. and Newton Chu, Esq., Attorneys for Perpetuating Unique Educational Opportunities Inc. ("PUEO")  
Lanny Sinkin for Temple of Lono  
Harry Fergerstrom  
Richard DeLeon  
Mehana Kihoi  
C.M. Kahookahi Kanuha  
Joseph Camara  
Jennifer Leina`ala Sleightholm  
Maelani Lee

Received  
Office of Conservation and Coastal Lands  
2016 Oct 10 5:00 pm  
Department of Land and Natural Resources  
State of Hawaii

Kalikolehua Kanaele  
 Stephanie-Malia Tabbada  
 Tiffnie Kakalia  
 Glen Kila  
 Dwight Vicente  
 Brannon Kamahana Kealoha  
 Cindy Freitas  
 William Freitas

In addition to the Motion, the following submissions were considered:

<b>DOC.</b>	<b>TITLE</b>	<b>COUNSEL/PARTY</b>
135	The University of Hawaii at Hilo’s Opposition to Temple of Lono’s Motion for Partial Summary Judgment (Doc. 78); Declaration of counsel; Exhibits “1” – “2”; COS	University of Hawaii at Hilo
142	TMT International Observatory, LLC’s Joinder in (1) The University of Hawai`i at Hilo’s Opposition to Temple of Lono’s Motion for Partial Summary Judgment; and (2) The University of Hawai`i at Hilo’s Opposition to Living Heir/Proper Party/Petitioner Stephanie-Malia Tabbada’s Motion to Vacate Entire Process for Violation of BLNR and University of Hawai`i Fiduciary Trust, Rights, Responsibilities, Breach of Contract, Etc. Mandated by the Law of the Land; COS	TMT International Observatory, LLC
154	Perpetuating Unique Educational Opportunities, Inc.’s Joinder in the University of Hawai`i at Hilo’s Opposition (Doc. 135) to Temple of Lono’s Motion for Partial Summary Judgment (Doc. 78); COS	Perpetuating Unique Educational Opportunities, Inc.
176	Temple of Lono Reply to the University of Hawai`i at Hilo’s Opposition to Temple of Lono’s Motion for Partial Summary Judgment (Doc. 78); COS	Temple of Lono

On October 5, 2016, the University of Hawai`i at Hilo filed a Proposed Minute Order No.

\_\_\_ Denying the Motion (“Proposed Minute Order”; Doc. 315).<sup>1</sup> Three responses to the

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<sup>1</sup> At the 5<sup>th</sup> pre-hearing conference, held on October 3, 2016, the Hearing Officer requested that prevailing parties submit proposed minute orders relative to motions for which oral rulings were rendered but written Minute Orders were still outstanding. Deadline for submission of the proposed minute orders was set for Wednesday,

Proposed Minute Order were submitted. Cindy Freitas submitted Objection to All Minute Order No. \_\_\_\_ That Was Filed In The Document Library On October 5, 2016 Doc 322, 321, 320, 319, 318, 317, 316, 315, 314, 312, 311, 310, 309 and 308, on October 7, 2016 (“C. Freitas Objection”); Doc. 332 and Doc. 333)<sup>2</sup>. Temple of Lono submitted a Response to Proposed Minute Order No. \_\_\_\_ Denying Temple of Lono Motion For Partial Summary Judgment (Doc. 78) (Doc. 315); Exhibit 1; COS (Doc. 334).

Based upon the Motions, all related and oral submissions from counsels and/or parties, the Proposed Minute Order and all submissions related thereto, all applicable law, the entire record having been considered by the Hearing Officer, IT IS HEREBY ORDERED that the Motion is DENIED.

The Motion seeks “partial summary judgment that the summit of Mauna a Wākea is a sacred site of special significance to the traditional Hawaiian faith and to a partial summary judgment that the traditional Hawaiian faith is still practiced.” Parties opposing the Motion have argued that the grounds upon which the Motion seeks relief would violate the Establishment Clause of both the U.S. and Hawai‘i Constitutions because it would require the Hearing Officer to recognize a religious servitude over the summit area of Mauna Kea and because such claims are unsupported by admissible evidence. This Hearing Officer finds that summary judgment, partial or otherwise, is an improper mechanism to determine the factual issues asserted by the Temple of Lono and further finds that the positions set forth are not properly before the Hearing Officer in this contested case proceeding.

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October 5, 2016, 4:30 p.m. Deadline for the submission of responses to the proposed minute orders was set for Friday, October 7, 2016, 4:30 p.m.

<sup>2</sup> It appears that C. Freitas filed two identical documents; Doc. No. 332 is file-stamped “2016 Oct 07 at 11:44 a.m.” and Doc. No. 333 is file-stamped “2016 Oct 07 at 3:39”.

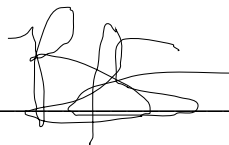
Ms. Freitas' objections to the Proposed Minute Order are based on her belief that "There for [sic] all **DOC 322, 321, 320, 319, 318, 318, 317, 316, 315, 314, 312, 311, 310, 309 AND 308** filed in the Document Library on October 5, 2016 is premature." Citing the "14<sup>th</sup> Amendment" Ms. Freitas contends that her rights are somehow denied by the Proposed Minute Order. Her arguments are illogical. The appropriate time to ask for reconsideration of the Minute Order in question is after it is filed. It has not been filed yet. The filing of this Minute Order will trigger the process for reconsideration as set out herein.

**Motion to Reconsider.** A party, who believes it appropriate, may file a motion to reconsider using the procedure set out herein. Any Motion for Reconsideration shall not be used to reargue the motion or set out positions of a purely repetitious nature or to present factual or legal grounds that could or should have been presented at the original hearing. AMFAC, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114 (1992).

The deadline for submission of any **motion** to reconsider this minute order and/or the Order Setting Issues, is no later than **5 business days** after the date this Minute Order are filed in the Documents Library. Any **responses to motions to reconsider**, shall be submitted no later than **10 business days** after this motion and order are filed in the Documents Library; essentially 5 business days after the deadline for motions to reconsider.

Any Motion to Reconsider shall be considered a non-hearing motion unless otherwise designated by the Hearing Officer.

DATED: Honolulu, Hawai`i, October 10, 2016.



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Judge Riki May Amano (Ret.)  
Hearing Officer

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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

BLNR Contested Case HA-16-02  
Document title:  
Minute Orders 21, 22, 23, 24, 25, 26, 27

(CORRECTED) CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced Minute Orders were served upon the following parties by the means indicated on October 10, 2016:

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Signature:   
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Date: October 11, 2016