

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF)	CASE NO. BLNR-CC-16-002
)	
Contested Case Hearing Re Conservation District)	Minute Order No. 29
Use Application (CDUA) HA-3568 For the)	(Order Denying Temple of Lono's
Thirty Meter Telescope at the Mauna Kea Science)	Motion to Dismiss for Lack of
Reserve, Ka`ohe Mauka, Hamakua, Hawai`i)	Jurisdiction Based on Unresolved
TMK (3) 4-4-015:009)	Land Claims (Doc. 126))
)	
)	Certificate of Service

MINUTE ORDER NO. 29

**(Order Denying Temple of Lono's
Motion to Dismiss for Lack of Jurisdiction
Based on Unresolved Land Claims (Doc. 126))**

On August 5, 2016, a hearing on Temple of Lono's Motion to Dismiss for Lack of Jurisdiction Based on Unresolved Land Claims (Doc 126) 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 Pisciotto, 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

Received
Office of Conservation and Coastal Lands
2016 Oct 10 8:39 pm
Department of Land and Natural Resources
State of Hawaii

Maelani Lee
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 submission was considered:

DOC.	TITLE	COUNSEL/PARTY
149	TMT International Observatory, LLC's Opposition to the Temple of Lono Motion to Dismiss for Lack of Jurisdiction Based on Unresolved Land Claims (doc 126)	TMT International Observatory, LLC

On October 5, 2016, TMT International Observatory, LLC filed a Proposed Minute Order No. __ Denying the Motion ("Proposed Minute Order"; Doc. 310).¹ Three responses to the 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)². Temple of Lono submitted a Response to Proposed Minute Order No. ____ Denying Temple of Lono's Motion to Dismiss for Lack of Jurisdiction Based on Unresolved Land Claim (Doc. 126), on October 7, 2016 (Doc. 335).

¹ At the 5th 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, 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.

² 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".

Based upon the Motion, 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. This Hearings Officer finds that the Motion and the requested relief is contrary to applicable case law, including the United States Supreme Court's decision in *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009). In that case, the United States Supreme Court rejected the same argument raised by Temple of Lono in its Motion, that the alleged unlawfulness of the origins of the State of Hawai'i clouds or leaves unresolved the State's title to ceded lands. The Motion is also denied insofar as it raises non-justiciable political questions that are outside of this Hearings Officer's subject matter jurisdiction.

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 "14th 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.



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'ohe Mauka,
Hāmakua, Hawai'i, TMK (3) 4-4-015:009

BLNR Contested Case HA-16-02
Document title:
Minute Orders 28, 29, 30, 31, 32, 33

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 11, 2016:

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Signature:

Name: Michael Cain

Date: October 11, 2016