

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. 30
Use Application (CDUA) HA-3568 For the	)	(Order Denying Kamahana Kealoha:
Thirty Meter Telescope at the Mauna Kea Science	)	Motion Invoking Quo Warranto,
Reserve, Ka`ohe Mauka, Hamakua, Hawai`i	)	Respectfully, a Demand of
TMK (3) 4-4-015:009	)	Jurisdiction; Declaratory Judgment
	)	on a Constitutional Issue/
	)	Violation Resubmitted 8/8/2016
	)	(Doc. 180))
)	
_____	)	Certificate of Service

MINUTE ORDER NO. 30

(Order Denying Kamahana Kealoha: Motion Invoking Quo Warranto, Respectfully, a Demand of Jurisdiction; Declaratory Judgment on a Constitutional Issue/Violation Resubmitted 8/8/2016 (Doc. 180))

On August 12, 2016, a hearing on Kamahana Kealoha: Motion Invoking Quo Warranto, Respectfully, a Demand of Jurisdiction; Declaratory Judgment on a Constitutional Issue/Violation Resubmitted 8/8/2016 (Doc. 180) (“Motion”) was held in Hilo, Hawai`i at the Hawaii Community College, Cafeteria, 1175 Manono 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, E. Kalani Flores and Keomailani Van Gogh
Timothy Lui-Kwan, Esq. and John Manaut, Esq., Attorneys for the University of Hawaii-Hilo (“UHH”)
J. Douglas Ing, Esq. and Ross Shinyama, Esq., Attorneys for TMT International Observatory, LLC
Lincoln Ashida, Esq., Attorneys for Perpetuating Unique Educational Opportunities Inc. (“PUEO”)

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

Lanny Sinkin for Temple of Lono with Kahuna Tamehameha Kamealoha
 Anumealin Nobriga
 David Louie, Esq., Attorney for Attorney General Doug Chin, Department of the
 Attorney General and Individual Attorneys General
 Harry Fergerstrom
 Mehana Kihoi
 C.M. Kahookahi Kanuha
 Joseph Camara
 Jennifer Leina`ala Sleightholm
 Stephanie-Malia Tabbada
 Tiffnie Kakalia
 Dwight Vicente
 Brannon Kamahana Kealoha
 Cindy Freitas
 William Freitas
 Kalikolehua Kanaele

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

DOC.	TITLE	COUNSEL/PARTY
184	TMT International Observatory, LLC's Opposition to Kamahana Kealoha: Motion Invoking quo Warranto, Respectfully, A Demand of Jurisdiction; Declaratory Judgment on a Constitutional Issue/Violation Resubmitted 8/8/2016	TMT International Observatory, LLC
189	Kamahana Kealoha: Response to TMT International Observatory, LLC's Opposition to Motion Invoking Quo Warranto, Respectfully, A Demand of Jurisdiction; Declaratory Judgment on a Constitutional Issue/Violation Resubmitted 8/8/2016	Brannon Kamahana Kealoha
202	The University of Hawaii at Hilo's Joinder to TMT International Observatory, LLC's Opposition to Kamahana Kealoha: Motion Invoking quo Warranto, Respectfully, A Demand of Jurisdiction; Declaratory Judgment on a Constitutional Issue/Violation Resubmitted 8/8/2016	University of Hawaii-Hilo
206	Opposition to TMT International Observatory's Opposition to Kamahana Kealoha Motion Invoking Quo Warranto	Harry Fergerstrom
239	(A) Response to University of Hawaii Oppositions Doc 139, 194, 196, 197, 198, 199, 200, 201, 202; (B) Support Kamahana Kealoha Quo Warranto Doc 180, et al.	Stephanie Tabbada

On October 5, 2016, TMT International Observatory, LLC, filed a Proposed Minute Order No. ___ Denying the Motion (“Proposed Minute Order”; Doc. 311).¹ 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.

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. This Hearings Officer finds that she does not have the authority and/or jurisdiction to grant the relief being sought in this Motion. Pursuant to Hawai’i Revised Statutes Chapter 659, Mr. Kealoha’s request for quo warranto should be addressed to a circuit court, not this contested case hearing. 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

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”.

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'ohē 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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Date: October 11, 2016