

**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 )  
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\_\_\_\_\_ )

CASE NO. BLNR-CC-16-002  
  
Minute Order No. 33  
(Order Denying Temple of Lono's  
Motion to Dismiss Out of Time  
(Doc. 179))  
  
**Certificate of Service**

**MINUTE ORDER NO. 33**

**(Order Denying Temple of Lono's Motion to Dismiss Out of  
Time (Doc. 179))**

On August 29, 2016, a hearing on Temple of Lono's Motion to Dismiss Out of Time (Doc. 179) ("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. for Mauna Kea Anaina Hou, for and with Clarence K. Ching, Kealoha Pisciotta, Pualani Case, Hawane Rios, Keomailani Von Gogh and E. Kalani Flores;  
Timothy Lui-Kwan, Esq., and Ian Sandison, Esq., for the University of Hawai`i-Hilo ("UH-Hilo").  
J. Douglas Ing, Esq. and Ross Shinyama, Esq. for TMT International Observatory, LLC. ("TIO")  
Harry Fergerstrom  
Mehana Kihoi  
C.M. Kaho`okahi Kanuha  
Joseph Kualii Lindsey Camara  
Lincoln Ashida, Esq. for Perpetuating Unique Educational Opportunities, Inc. ("PUEO") with Keahi Warfield, Bill Brown and Richard Ha  
Jennifer Leina`ala Sleightholm  
Lanny Sinkin, Temple of Lono with Kahuna Nobriga

Received  
Office of Conservation and Coastal Lands  
2016 Oct 10 10:41 pm  
Department of Land and Natural Resources  
State of Hawaii

Kalikolehua Kanaele  
Tiffnie Kakalia  
Dwight J. Vicente  
William Freitas  
Harvey Henderson, Esq. for Governor Ige, Chairperson Suzanne Case and Board  
Member Stanley Roehrig  
Cindy Freitas

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

<b>DOC.</b>	<b>TITLE</b>	<b>COUNSEL/PARTY</b>
183	TMT International Observatory, LLC's Objections to (1) Temple of Lono Motion for Reconsideration; (2) Temple of Lono Motion to File Motion Out of Time; and (3) Joseph K.L. Camara's Joinder to Richard Naiwieha Wurderman's Motion to Strike Conservation District Use Application, HA-3568 dated September 2, 2101, and/or Motion for Summary Judgment	TMT International Observatory, LLC ("TIO")
193	Leina`ala Sleightholm Joinder to Temple of Lono Motion to File Motion Out of Time	Leina`ala Sleightholm
194	The University of Hawaii at Hilo's Opposition to Temple of Lono's Motion to File Out of Time (Doc. 179)	University of Hawaii at Hilo ("UH-Hilo")
198	The University of Hawai'i at Hilo's Objection to J. Leina'ala Sleightholm's Joinder to Temple of Lono Motion to File Out of Time Filed August 10, 2016 (Doc. 193)	UH-Hilo
199	The University of Hawai'i at Hilo's Joinder as to Part (3) of TMT International Observatory LLC's Objections to (1) Temple of Lono Motion for Reconsideration; (2) Temple of Lono Motion to File Motion out of Time; and (3) Joseph K.L. Camara's Joinder to Richard Naiwieha Wurderman's Motion to Strike Conservation District Use Application, HA-3568 Dated September 2, 2010 and/or Motion for Summary Judgment, Filed August 9, 201 (Doc. 183)	UH-Hilo
203	TMT International Observatory, LLC's Objections to the Untimely Motions and Joinders Filed by Anti-TMT Parties Including, But Not Limited to, Doc. Nos. 178, 179, 187, 190, 191, 192, 193, and 195; COS	TIO
221	Glen Kila Memorandum in Support of Motion to File Motion Out of Time	Glen Kila
227	Motion to File Motion Out of Time	Cindy Freitas

235	J. Leina`ala Sleightholm's Memorandum in Support of Temple of Lono Motion to File Motion Out of Time	Leina`ala Sleightholm
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; (c) Support Dwight Vincente Filings; (d) Response to Motion for Protective Order Doc 182; (e) In Support of Richard Wurdeman's Motion to Strike CDUA Application HA-3568 Discussed 8/12/2016	Stephanie-Malia Tabbada
241	UH Joinder to TMT International Observatory, LLC's Objection to the Untimely Motions and Joinder Filed by Anti-TMT Parties Including But Not Limited to Doc. Nos. 178, 179, 187, 190, 191, 192, 193, and 195 Filed August 11, 2016 (Doc. 203)	UH-Hilo
244	Fergerstrom Memorandum in Support of Temple of Lono Motion to File Motion Out of Time	Harry Fergerstrom

On October 5, 2016, TMT International Observatory, LLC, filed a Proposed Minute Order No. \_\_ Denying the Motion ("Proposed Minute Order"; Doc. 318).<sup>1</sup> 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>.

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.

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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, 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".

The deadline set by the Hearing Officer in this proceeding for all pre-hearing motions was July 18, 2016 and the response deadline for all motions was August 1, 2016. *See* Minute Order No. 13 (Doc. 115). The Motion and documents in support of the Motion seek relief to file additional motions after the July 18, 2016 deadline. The Hearing Officer finds no good cause to grant the Motion.

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.

A handwritten signature in blue ink, appearing to read 'Riki May Amano', written over a horizontal line.

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