

**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 )  
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CASE NO. BLNR-CC-16-002  
**Minute Order No. 37**  
(Order Denying Motion to Strike  
Conservation District Use  
Application, HA-3568, Dated  
September 2, 2010, And/Or  
Motion for Summary Judgment  
(Doc. 94)  
**Certificate of Service**

**MINUTE ORDER NO. 37**

**((Order Denying Motion to Strike Conservation District  
Use Application, HA-3568, Dated September 2, 2010,  
And/Or Motion for Summary Judgment (Doc. 94))**

On August 5, 2016 and August 12, 2016, the Motion to Strike Conservation District Use Application, HA-3568, Dated September 2, 2010, And/Or Motion for Summary Judgment (“Motion”), Doc. 94, was heard in Hilo, Hawai`i. The Motion was submitted by Richard Wurdeman, Esq. on behalf of Petioners Mauna Kea Anaina Hou and Kealoha Pisciotta, Clarence Kukauakahi Ching, Flores-Case Ohana, Deborah J. Ward, Paul K. Neves, and Kahea: The Hawaiian Environmental Alliance (“Movants”).

The following persons were present on August 5<sup>th</sup>, at the YMCA, 300 W. Lanikaula Street, Hilo:

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

Received  
Office of Conservation and Coastal Lands  
Department of Land and Natural Resources  
State of Hawaii  
2016 Oct 19 7:15 am

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

The following persons were present on August 12<sup>th</sup>, at the Hawaii Community College Cafeteria, 1175 Manono Street, Hilo:

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”)  
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 to the Document Library were considered:

<b>DOC.</b>	<b>TITLE</b>	<b>COUNSEL/PARTY</b>
137	The University of Hawaii at Hilo's opposition to Petitioners Mauna Kea Anaina Hou and Kealoha Pisciotta, Clarence Kukauakahi Ching, Flores-Case Ohana, Deborah J. Ward, Paul K. Neves and KAHEA: The Hawaiian Environmental Alliance's motion to strike Conservation District Use Application, HA-3569, dated September 2, 2010, and/or motion for summary judgment, filed July 18, 2016 [Doc. 94]	University of Hawaii`i at Hilo
148	TMT International Observatory, LLC's opposition to Petitioners Mauna Kea Anaina Hou and Kealoha Pisciotta, Clarence Kukauakahi Ching, Flores-Case Ohana, Deborah J. Ward, Paul K. Neves, and Kahea: The Hawaiian Environmental Alliance's motion to strike Conservation District Use Application, HA-3568, dated September 2, 2010, and/or motion for summary judgment filed July 18, 2016 [Doc. 94]	TMT International Observatory, LLC
170	Perpetuating Unique Educational Opportunities, Inc.s joinder in The University of Hawaii at Hilo's opposition to Petitioners Mauna Kea Anaina Hou and Kealoha Pisciotta, Clarence Kukauakahi Ching, Flores-Case Ohana, Deborah J. Ward, Paul K. Neves and KAHEA: The Hawaiian Environmental Alliance's motion to strike Conservation District Use Application, HA-3569, dated September 2, 2010, and/or motion for summary judgment, filed July 18, 2016	PUEO
181	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 judgement	Joseph Camara
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) Jospeh K.L. Camara's joinder to	TMT International Observatory, LLC

	Richard Naiwieha Wurderman's motion to strike Conservation District Use Application, HA-3568 dated September 2, 2101, and/or motion for summary judgement	
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, 2016 [Doc. 183]	University of Hawai'i at Hilo

Based upon the Motions, all related and oral submissions from counsels and/or parties, all applicable law, and the entire record, IT IS HEREBY ORDERED that the Motion is DENIED.

The Motion asserts that the: (1) CDUA should be stricken and/or declared null and void; (2) University of Hawaii at Hilo should be dismissed as a party to this contested case hearing; and (3) TIO should not have been admitted as a party to this proceeding. The facts and the law do not support striking the CDUA or declaring it null and void. Similarly, the facts and the law do not support dismissing UH-Hilo as a party to this contested case hearing. Finally, Movants arguments about TIO being a party is tantamount to a request for reconsideration of the Hearing Officer's earlier decision to permit TIO's participation; this re-argument fails to offer any new consideration for a different outcome.

**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 18, 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 37 and 38**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by the means indicated on October 19, 2016:

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