

**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	)	<b>Minute Order No. 38</b>
Use Application (CDUA) HA-3568 For the	)	((Order Denying Motion to
Thirty Meter Telescope at the Mauna Kea Science	)	Disqualify BLNR's and Hearing
Reserve, Ka`ohe Mauka, Hamakua, Hawai`i	)	Officer's Counsel (Doc. 95))
	)	
	)	
	)	
_____	)	<b>Certificate of Service</b>

**MINUTE ORDER NO. 38**  
**((Order Denying Motion to Disqualify BLNR's and  
Hearing Officer's Counsel (Doc. 95))**

On August 5, 2016 and August 12, 2016, a Motion to Disqualify BLNR's and Hearing Officer's Counsel ("Motion"), Doc. 95, 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
- Lincoln Ashida, Esq. and Newton Chu, Esq., Attorneys for Perpetuating Unique Educational Opportunities Inc. ("PUEO")
- Lanny Sinkin for Temple of Lono
- Harry Fergerstrom

Received  
Office of Conservation and Coastal Lands  
Department of Land and Natural Resources  
State of Hawaii  
2016 Oct 19 7:31 am

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

At the commencement of the hearing on the Motion on August 5th, Mr. Wurdeman advised that he had not been served with an opposition memo (Doc. 157) submitted by Mr. Louie. Thus, the matter was continued to August 12<sup>th</sup>.

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>
138	The University of Hawaii at Hilo's opposition to Petitioners' motion to disqualify BLNR's and Hearing Officer's Counsel, filed July 18, 2016 [Doc. 95]	University of Hawai'i at Hilo
147	TMT International Observatory, LLC's opposition to motion to disqualify BLNR's and Hearing Officer's counsel	TMT International Observatory, LLC
153	Perpetuating Unique Educational Opportunities, Inc.s joinder in The University of Hawaii at Hilo's opposition to Petitioners' motion to disqualify BLNR's and Hearing Officer's counsel, filed July 18, 2016	PUEO
157	Attorney General Douglas S. Chin, The Department of the Attorney General, and Deputy Attorneys General in their capacity as counsel for the Board of Land and Natural Resources and Hearing Officer's, Memorandum in opposition to Petitioners Mauna Kea Anaina Hou; Keahola Pisciotta; Clarence Kukaukahi Ching; Flores Case-Ohana; Deborah J. Ward; Paul K. Neves and Kahea: The Environmental Alliance's motion to disqualify the BLNR's and Hearing Officer's counsel	Attorney General by David Louie
130	Petitioners Mauna Kea Anaina Hou et al.'s: (1) Renewal of objections to hearing officer selection process and hearing officer appointment, and (2) supplemental arguments on motion to disqualify BLNR's and Hearing Officer's counsel, filed on July 18, 2016	MKAH

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 seeks to disqualify Attorney General Douglas Chin, Deputy Attorney General William J. Wynhoff, Deputy Attorney General Julie H. China and other deputies' attorney general from participating in any matters related to this contested case hearing including providing legal counsel to the Board of Land and Natural Resources and this Hearing Officer. Movants base the challenge on the attorney's prior work and general allegations of conflict of interest, alleging that they advocated on behalf of or in favor of the issuance of the CDUP permit and the Thirty Meter Telescope. There is no reliable evidence produced by Movants that the Attorney General or any deputy acted beyond the scope of his or her duties as legal representatives of the Department.

As cited by Special Deputy Attorney General David Louie in his Memorandum in Opposition (Doc. 195), "The party seeking disqualification carries a heavy burden and must satisfy a high standard of proof because of the potential for abuse. A motion for disqualification should not be decided on the basis, of general and conclusory allegations." White v. Time Warner Cable, No. CIV. 12-00406 JMS, 2013 WL 772848, at \*1 (D. Haw. Feb. 27, 2013). There is no legal basis to grant the Motion.

**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.

A handwritten signature in black ink, appearing to be 'RMA', 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,  
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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Date: October 19, 2016