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A Limited Liability Law Partnership

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Attorneys for
TMT INTERNATIONAL OBSERVATORY, LLC

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF

A Contested Case Hearing Re Conservation
District Use Permit (CDUP) HA-3568 for the
Thirty Meter Telescope at the Mauna Kea
Science Reserve, Kaohe Mauka, Hamakua
District, Island of Hawaii, TMK (3) 4-4-
015:009

Case No. BLNR-CC-16-002

**TMT INTERNATIONAL
OBSERVATORY, LLC'S
MEMORANDUM IN OPPOSITION TO
KAHEA: THE ENVIRONMENTAL
ALLIANCE'S JOINDER IN TEMPLE OF
LONO'S MOTION TO STRIKE FOR
FAILURE TO SERVE OR EXTENSION
OF TIME AND RESCHEDULING OF
HEARING FILED OCTOBER 12, 2016,
FILED OCTOBER 17, 2016;
DECLARATION OF ROSS T.
SHINYAMA; EXHIBITS 1-6;
CERTIFICATE OF SERVICE**

**TMT INTERNATIONAL OBSERVATORY, LLC'S MEMORANDUM IN OPPOSITION
TO KAHEA: THE ENVIRONMENTAL ALLIANCE'S JOINDER IN TEMPLE OF
LONO'S MOTION TO STRIKE FOR FAILURE TO SERVE OR EXTENSION OF TIME
AND RESCHEDULING OF HEARING FILED OCTOBER 12, 2016,
FILED OCTOBER 17, 2016**

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AND COASTAL LANDS

2016 OCT 19 A 11:21

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

COMES NOW, TMT International Observatory, LLC (“TIO”), by and through its counsel, Watanabe Ing LLP, and hereby submits this Memorandum in Opposition to KAHEA: The Environmental Alliance’s (“KAHEA”) Joinder in Temple of Lono’s (“TOL”) Motion to Strike for Failure to Serve or Extension of Time and Rescheduling of Hearing, filed October 12, 2016 (“Motion to Strike”), filed October 17, 2016 (“Joinder”). The Joinder should be denied, inasmuch as TIO timely filed its pleadings and timely served those pleadings upon all parties to this proceeding.

I. DISCUSSION

In its Joinder, KAHEA argues that TIO’s pleadings should be stricken because TIO failed to serve copies of the pleadings on some of the parties. KAHEA, however, is mistaken. TIO timely filed its pleadings, and timely served all parties in this proceeding.

Pursuant to the deadlines set forth by the Hearing Officer, TIO filed its Final Witness List and Written Direct Testimony of Witnesses, Pre-Hearing Statement, and Exhibit List and Exhibits 1 to 34 on October 11, 2016. The time-stamped copies of each of these pleadings illustrates that they were filed at 3:48 pm, 3:48 pm, and 3:49 pm, respectively, on October 11, 2016. See Exhibits 1, 2, 3, attached hereto.

On October 11, 2016, at 4:56 pm, via email correspondence, TIO served copies of the pleadings upon all parties to this proceeding. See Exhibit 4, attached hereto; Declaration of Ross Shinyama, attached hereto. In that email correspondence, Ellen Yamamoto of the law firm of Watanabe Ing LLP provided a link to each of the parties in this proceeding, which allowed those parties to download the pleadings. Note that the email address of KAHEA’s counsel at the time, Richard Naiwieha Wurdeman, is clearly included in this email correspondence, as is KAHEA’s representative, Bianca Esaki. Several of the parties downloaded the documents using

the email link, indicating that the email correspondence had been received and the link operational. There was no bounce-back message indicating that this email correspondence failed to reach any of the listed recipients, including KAHEA's counsel.

Additionally, Michael Cain of the Board of Land and Natural Resources accessed the pleadings via the email link provided by Ellen Yamamoto on October 11, 2016. See Exhibit 6. Mr. Cain then placed TIO's pleadings on the DLNR website, so that all of the parties could access the documents. Accordingly, DLNR itself received the October 11, 2016 email correspondence from Ellen Yamamoto, again indicating that service had been successful.

In its Joinder, KAHEA points to email correspondence on October 11, 2016 from Frances Soares of the Watanabe Ing law firm. A copy of this email is attached hereto as Exhibit 5, and was sent inadvertently to all parties in this proceeding. The email from Frances Soares did not contain any information or any indication that its purpose was service of the pleadings on the parties. The email from Frances Soares does not change the fact that on October 11, 2016, at 4:56 pm, TIO (via email correspondence from Ellen Yamamoto) provided an email link to the pleadings, fulfilling its obligations to serve all parties in this proceeding with copies of the relevant documents.

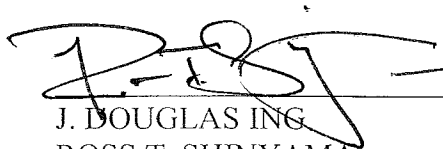
In its Joinder, KAHEA also claims that its new counsel, Yuklin Aluli and Dexter Kaiama, did not receive service of the pleadings. However, the Notice of Appearance of Co-Counsel for those attorneys was not filed until October 11, 2016 and received by counsel for TIO until October 12, 2016, the day after TIO's pre-hearing documents were filed. Consequently, it is disingenuous for KAHEA to argue that service should have been made on counsel who were not yet of record in this proceeding, especially where KAHEA's existing counsel, Richard Naiwieha Wurdeman, and KAHEA's representative, Bianca Esaki, were served.

In light of the foregoing, the Joinder should be denied. TIO timely served all parties to the proceeding. The actions of TIO in serving the parties in this proceeding were in accordance with regular business practices, and do not warrant a striking of the pleadings. Moreover, DLNR itself received the email link and posted all of the pleadings on its website for the parties to access. Consequently, there has been no prejudice whatsoever to KAHEA. Even if it had not received the October 11, 2016 email correspondence from Ellen Yamamoto, it clearly had access to the DLNR website. KAHEA's Joinder is clearly intended to unnecessarily delay the proceedings, and is without merit.

II. CONCLUSION

For the foregoing reasons, and all reasons appearing of record, TIO respectfully requests that KAHEA's Joinder be denied.

DATED: Honolulu, Hawaii, October 19, 2016.

A handwritten signature in black ink, appearing to read 'J. Douglas Ing', is written over a horizontal line.

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ROSS T. SHINYAMA
SUMMER H. KAIWE
Attorneys for
TMT INTERNATIONAL OBSERVATORY, LLC

BOARD OF LAND AND NATURAL RESOURCES
FOR THE STATE OF HAWAII

IN THE MATTER OF

A Contested Case Hearing Re Conservation
District Use Permit (CDUP) HA-3568 for the
Thirty Meter Telescope at the Mauna Kea
Science Reserve, Kaohe Mauka, Hamakua
District, Island of Hawaii, TMK (3) 4-4-
015:009

Case No. BLNR-CC-16-002

**DECLARATION OF ROSS T.
SHINYAMA; EXHIBITS 1-6;**

DECLARATION OF ROSS T. SHINYAMA

I, ROSS T. SHINYAMA, hereby declare and state as follows:

1. I am an attorney licensed to practice law in the State of Hawaii and am one of the attorneys representing TMT International Observatory LLC, a non-profit organization (“TIO”) in the above-captioned matter.
2. I make this Declaration based upon my personal knowledge and upon reliance of the files and records maintained by my office and in the normal and regular course of business.
3. Pursuant to the deadlines set forth by the Hearing Officer, TIO filed its Final Witness List and Written Direct Testimony of Witnesses, Pre-Hearing Statement, and Exhibit List and Exhibits 1 to 34 on October 11, 2016.
4. Attached as Exhibits 1, 2, and 3 are true and accurate copies of the time-stamped pages of each of these pleadings, illustrating that they were filed at 3:48 pm, 3:48 pm, and 3:49 pm, respectively, on October 11, 2016.
5. Attached as Exhibit 4 is a true and accurate copy of email correspondence, dated October 11, 2016 at 4:56 pm, from Ellen Yamamoto of my law firm, showing that TIO served copies of the pleadings upon all parties to this proceeding. In that email correspondence, Ellen

Yamamoto of my law firm provided a link to each of the parties in this proceeding, which allowed those parties to download the pleadings. Note that the email address of TOL's counsel, Richard Naiwieha Wurdeman, is clearly included in this email correspondence, as is KAHEA's representative, Bianca Esaki. Several of the parties downloaded the documents using the email link, indicating that the email correspondence had been received and the link operational. There was no bounce-back message indicating that this email correspondence failed to reach any of the listed recipients, including KAHEA's counsel.

6. Attached hereto as Exhibit 6 is a true and accurate copy of an email notification indicating that Michael Cain of the Board of Land and Natural Resources accessed the pleadings via the email link provided by Ellen Yamamoto on October 11, 2016. With Mr. Cain's receipt of the documents, TIO's pleadings were placed on the DLNR website, so that all of the parties could access the documents. Accordingly, DLNR itself received the October 11, 2016 email correspondence from Ellen Yamamoto, again indicating that service had been successful.

7. There was email correspondence on October 11, 2016 from Frances Soares of my law firm sent inadvertently to all parties. A true and accurate copy of this email is attached hereto as Exhibit 5. The email from Frances Soares did not contain any information or any indication that its purpose was service of the pleadings on the parties. The email from Frances Soares does not change the fact that on October 11, 2016, at 4:56 pm, TIO (via email correspondence from Ellen Yamamoto) provided an email link to the pleadings, fulfilling its obligations to serve all parties in this proceeding with copies of the relevant documents.


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I, ROSS T. SHINYAMA, declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawaii, October 19, 2016.


ROSS T. SHINYAMA

521209
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BOARD OF LAND AND NATURAL RESOURCES
FOR THE STATE OF HAWAII

IN THE MATTER OF

A Contested Case Hearing Re Conservation
District Use Permit (CDUP) HA-3568 for the
Thirty Meter Telescope at the Mauna Kea
Science Reserve, Kaohe Mauka, Hamakua
District, Island of Hawaii TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

**TMT INTERNATIONAL OBSERVATORY, LLC
FINAL WITNESS LIST and WRITTEN DIRECT
TESTIMONY OF WITNESSES CERTIFICATE OF
SERVICE**

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
OCT 11 2 34 48
BOARD OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

**TMT INTERNATIONAL OBSERVATORY, LLC's FINAL WITNESS LIST
AND WRITTEN DIRECT TESTIMONY OF WITNESSES**

TMT INTERNATIONAL OBSERVATORY, LLC ("TIO") by and through its attorneys,
WATANABE ING, hereby submits its final witness list, including the written direct testimony of
each witness, which TIO expects to call at the evidentiary hearing in the above-referenced
Contested Case matter.

EXHIBIT "1"

WATANABE ING LLP
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FOR THE STATE OF HAWAII

IN THE MATTER OF

A Contested Case Hearing Re Conservation
District Use Permit (CDUP) HA-3568 for the
Thirty Meter Telescope at the Mauna Kea
Science Reserve, Ka'ohē Mauka, Hāmākuā
District, Island of Hawai'i, TMK (3) 4-4-
015:009

Case No. BLNR-CC-16-002

**TMT INTERNATIONAL
OBSERVATORY, LLC'S PRE-HEARING
STATEMENT; EXHIBIT "1";
CERTIFICATE OF SERVICE**

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OFFICE OF THE ATTORNEY GENERAL
HONOLULU, HAWAII

2016 OCT 11 P 3:48

STATE OF HAWAII
LAND AND NATURAL RESOURCES
STATE OF HAWAII

WATANABE ING LLP
A Limited Liability Law Partnership

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FOR THE STATE OF HAWAII

IN THE MATTER OF

A Contested Case Hearing Re Conservation
District Use Permit (CDUP) HA-3568 for the
Thirty Meter Telescope at the Mauna Kea
Science Reserve, Kahohe Mauka, Hamakua
District, Island of Hawaii, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

**TMT INTERNATIONAL OBSERVATORY, LLC'S
EXHIBIT LIST and EXHIBITS 1 to 34;
CERTIFICATE OF SERVICE**

PARTY: TMT INTERNATIONAL OBSERVATORY, LLC

Exhibit No.	Description	Received Into Evidence
C-1	Testimony of Ed Stone	
C-2	Testimony of Gary Sanders	
C-3	Graphic showing Mitigation Measures Reduce Size and Visibility of TMT	

EXHIBIT "3"

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2016 OCT 11 P 3:49

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Ellen A. Yamamoto

From: Ellen A. Yamamoto
Sent: Tuesday, October 11, 2016 4:56 PM
To: 'michael.cain@hawaii.gov'; 'dlnr.maunakea@hawaii.gov'; 'isandison@carlsmith.com'; 'RNWurdeman@RNWLaw.com'; 'akulele@yahoo.com'; 'uhiwai@live.com'; 'kahookahi@gmail.com'; 'kualiic@hotmail.com'; 'lsa@torkildson.com'; 'njc@torkildson.com'; 'leina.ala.s808@gmail.com'; 'maelanilee@yahoo.com'; 'lanny.sinkin@gmail.com'; 's.tabbada@hawaiiantel.net'; 'tiffniekakalia@gmail.com'; 'makakila@gmail.com'; 'brannonk@hawaii.edu'; 'hanahanai@hawaii.rr.com'; 'pohaku7@yahoo.com'; 'kekaukike@msn.com'; 'tluikwan@carlsmith.com'; 'jpm@carlsmith.com'; 'Imcaneley@carlsmith.com'; 'ekflores@hawaiiantel.net'; 'kealiikea@yahoo.com'; 'keomaivg@gmail.com'; 'puacase@hawaiiantel.net'; 'bianca@kahea.org'; 'kahiwal@cs.com'; 'cordylinecolor@gmail.com'
Cc: J. Douglas Ing; Ross T. Shinyama; Summer H. Kaiawe; Denise H. Kameda; Charlene M. Moriwaki
Subject: TMT/BLNR Case No. BLNR-CC-16-002
Attachments: Attachments

All,

Attached for your information are the following documents filed on behalf of TMT International Observatory, LLC:

- 1) TIO Prehearing Statement
- 2) TIO Final Witness List and Written Testimonies
- 3) TIO Exhibit List and Exhibits 1 thru 34

Please click on the link below to download the attachments.

ShareFile Attachments

Title	Size
TIO EXH C-1.pdf	102.3 KB
TIO EXH C-10.pdf	36.2 KB
TIO EXH C-11.pdf	25.1 KB
TIO EXH C-12.pdf	1.2 MB
TIO EXH C-13.pdf	45.4 KB
TIO EXH C-14.pdf	1 MB
TIO EXH C-15.pdf	351.8 KB
TIO EXH C-16.pdf	310.4 KB
TIO EXH C-17.pdf	55.5 KB
TIO EXH C-18.pdf	122.7 KB
TIO EXH C-19.pdf	89.1

	KB
TIO EXH C-2.pdf	1.2 MB
TIO EXH C-20.pdf	100.3 KB
TIO EXH C-21.pdf	102 KB
TIO EXH C-22.pdf	110.9 KB
TIO EXH C-23.pdf	68.6 KB
TIO EXH C-24.pdf	1.6 MB
TIO EXH C-25.pdf	895.5 KB
TIO EXH C-26.pdf	2.7 MB
TIO EXH C-27.pdf	1.7 MB
TIO EXH C-28.pdf	1.2 MB
TIO EXH C-29.pdf	962.9 KB
TIO EXH C-3.pdf	94.4 KB
TIO EXH C-30.pdf	402.1 KB
TIO EXH C-31.pdf	622.8 KB
TIO EXH C-32.pdf	4.6 MB
TIO EXH C-33.pdf	125.6 KB
TIO EXH C-34.pdf	790.5 KB
TIO EXH C-4.pdf	566.6 KB
TIO EXH C-5.pdf	309.6 KB
TIO EXH C-6.pdf	525.9 KB
TIO EXH C-7.pdf	299.9 KB
TIO EXH C-8.pdf	36.4 KB
TIO EXH C-9.pdf	36.3 KB
TIO Exhibit List.pdf	188.1 KB
TIO Final Witness List and Written Testimonies.pdf	47.2 MB
TMT International Observatory, LLC's Pre-Hearing Statement; Exhibit 1; COS.pdf	3.6 MB



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Thank you

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Frances M. Soares

From: Frances M. Soares
Sent: Tuesday, October 11, 2016 4:27 PM
To: michael.cain@hawaii.gov; dlnr.maunakea@hawaii.gov; isandison@carlsmith.com; RNWurdeman@RNWLaw.com; akulele@yahoo.com; uhiwai@live.com; kahookahi@gmail.com; kualic@hotmail.com; lsa@torkildson.com; njc@torkildson.com; leina.ala.s808@gmail.com; maelanilee@yahoo.com; lanny.sinkin@gmail.com; s.tabbada@hawaiiantel.net; tiffniekakalia@gmail.com; makakila@gmail.com; brannonk@hawaii.edu; hanahanai@hawaii.rr.com; pohaku7@yahoo.com; kekaukike@msn.com; 'tluikwan@carlsmith.com'; 'jpm@carlsmith.com'; 'lmcaneley@carlsmith.com'; 'ekflores@hawaiiantel.net'; 'kealiikea@yahoo.com'; 'keomaivg@gmail.com'; 'puacaše@hawaiiantel.net'; 'bianca@kahea.org'; 'kahiwaL@cs.com'; 'cordylinicolor@gmail.com'
Cc: J. Douglas Ing; Denise H. Kameda; Summer H. Kaiawe; Ross T. Shinyama; Ellen A. Yamamoto; Charlene M. Moriwaki
Subject: BLNR Contested Case Hearing HA 16-002

Frances Soares

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EXHIBIT "5"

Ellen A. Yamamoto

From: ShareFile Notifications (No Reply) <noreply@sf-notifications.com>
Sent: Wednesday, October 12, 2016 1:15 AM
To: Ellen A. Yamamoto
Subject: Michael Cain has downloaded files from the folder 'File Box'



Ellen,

Michael Cain downloaded files from a "Send Files" link at 10/12/16 2:15A:

File Box

Name: TIO Final Witness List and Written Testimonies.pdf

f

Size: 47.16 MB • **Downloaded:** 10/12/16 2:14a

User: Michael Cain [michael.cain@hawaii.gov] (State of Hawaii DLNR)

Name: TMT International Observatory, LLC's Pre-Hearing

Statement; Exhibit 1; COS.pdf

Size: 3.64 MB • **Downloaded:** 10/12/16 2:14a

User: Michael Cain [michael.cain@hawaii.gov] (State of Hawaii DLNR)

Dates are displayed in UTC -10

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EXHIBIT "6"

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-16-002

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the attached document was served upon the following parties by the means indicated:

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Custodian of the Records
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Kukauakahi Ching, Flores-Case
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Co-Counsel for Petitioner
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non-profit Corporation

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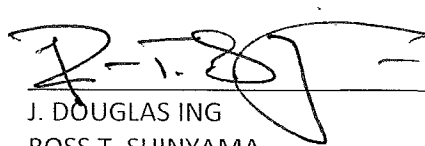
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Co-Counsel for Petitioner
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Environmental Alliance, a domestic
non-profit Corporation

DATED: Honolulu, Hawaii, _____ October 19, 2016 _____



J. DOUGLAS ING
ROSS T. SHINYAMA
SUMMER H. KAI AWE

Attorneys for TMT International Observatory LLC