

CARLSMITH BALL LLP

IAN L. SANDISON 5597
TIM LUI-KWAN 2271
JOHN P. MANAUT 3989
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, HI 96813
Tel No. 808.523.2500
Fax No. 808.523.0842
isandison@carlsmith.com
tluikwan@carlsmith.com
JPM@carlsmith.com

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2016 DEC 23 A 9 38

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

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'ohē Mauka, Hāmākua,
Hawai'i, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

APPLICANT UNIVERSITY OF HAWAI'I
AT HILO'S OPPOSITION TO HARRY
FERGERSTROM'S OPPOSITION TO
THE UNIVERSITY OF HAWAI'I'S
CONFIRMATION OF EXHIBITS AND
DIRECT WRITTEN TESTIMONIES TO
BE ENTERED INTO EVIDENCE AND
MOTION TO RECALL MR. PERRY J.
WHITE; DECLARATION OF COUNSEL;
EXHIBIT 1; CERTIFICATE OF SERVICE

**APPLICANT UNIVERSITY OF HAWAI'I AT HILO'S OPPOSITION TO
HARRY FERGERSTROM'S OPPOSITION TO THE UNIVERSITY OF
HAWAI'I'S CONFIRMATION OF EXHIBITS AND DIRECT WRITTEN
TESTIMONIES TO BE ENTERED INTO EVIDENCE AND MOTION TO
RECALL MR. PERRY J. WHITE**

Applicant UNIVERSITY OF HAWAI'I AT HILO ("University"), through counsel,
submits this Opposition to Harry Fergerstrom's *Opposition to the University of Hawai'i's*

*Confirmation of Exhibits and Direct Written Testimonies to be Entered into Evidence and Motion to Recall Mr. Perry J. White (“Motion”).*¹ The Motion has two parts. First, it purports to oppose the admission into evidence of the University’s exhibits and/or written direct testimonies on the grounds that doing so now is premature because not all of the University’s witnesses have been called. Second, it seeks leave to recall Mr. Perry White (“**Mr. White**”), a witness for the University, who was excused by the Hearing Officer on October 25, 2016. With respect to the first argument, the University is unclear as to why this objection has been lodged at this time. The Hearing Officer has ruled, and repeatedly explained, that objections to and rulings on the admission of exhibits shall be made at the close of the hearing; and, given this ruling, the University has not sought admission of its exhibits into the record at this time. With respect to the second part of the Motion, as set forth below, the University objects to the relief sought because Mr. Fergerstrom has failed to demonstrate the required good cause for recalling Mr. White for further cross-examination.

It appears from the Motion that Mr. Fergerstrom is seeking to recall Mr. White solely on the basis that he was not provided with hard copies of Mr. White’s written materials until after he had completed his cross-examination. As an initial matter, the University timely and properly served Mr. Fergerstrom and Mr. Vicente with electronic copies of its hearing materials, in accordance with the Hearing Officer’s order.² See Dec. of Counsel ¶ 4. At the October 3, 2016 pre-hearing conference, the Hearing Officer specifically stated that the distribution of hearing

¹ The Motion was included with Mr. Fergerstrom’s Evidentiary Hearing Submittals on the Department of Land and Natural Resources’ contested case hearing website at <http://dlnr.hawaii.gov/mk/evidentiary-hearing-submittals/> rather than in the Documents Library; and, as such, it was not assigned a Document Number.

² The University further notes that leading up to the contested case hearing, Mr. Fergerstrom had had filed 12 separate pleadings, all of which were drafted on a computer and all but one was filed electronically. See Doc. 398, 266, 257, 252, 248, 247, 244, 240, 219, 206, 186, 96.

materials to all parties would be done electronically. *See* Ex. 1, Oct. 3, 2016 Hr'g Tr. at 92:12-18. Both Mr. Fergerstrom and Mr. Vicente were at that hearing, and neither objected to the Hearing Officer's order. *See id.* at 3:22-23 and 5:5-6 (noting Messrs. Fergerstrom and Vicente attended the October 3, 2016 hearing).

On October 11, 2016, the University filed (1) *Applicant University of Hawai'i at Hilo's Exhibit List; Certificate of Service* (which included copies of Exhibits A-1 through and including A-123); (2) *Applicant University of Hawai'i at Hilo's Final Witness List and Submission of Written Direct Testimony; Certificate of Service*; and (3) *Applicant University of Hawai'i at Hilo's Opening Brief; Certificate of Service* (all three filings and Exhibits A-1 through and including A-123 collectively referred to as the "University's hearing materials"). Pursuant to the Hearing Officer's order at the October 3, 2016 pre-hearing conference that hearing materials would be served to all parties electronically, the University's hearing materials were served by email to all of the parties who have email addresses as reflected on the Certificate of Service. Dec. of Counsel ¶ 4. In addition, flash drives containing the University's hearing materials were sent to Messrs. Vicente and Fergerstrom (as well as Hearing Officer witness Ms. Wilma Holi) at their respective addresses of record. Dec. of Counsel ¶ 4. Neither Mr. Fergerstrom nor Mr. Vicente has indicated that their respective addresses of record are incorrect or that they have been unable to receive mail at those addresses.

At the October 20, 2016 hearing, nine days after the University filed its hearing materials, Mr. Fergerstrom and Mr. Vicente, for the *first time*, objected to not receiving hardcopies of the parties' exhibits. Dec. of Counsel ¶ 6. Nonetheless, to accommodate their late request for hard copies, the Hearing Officer ordered *all parties* to provide hard copies of hearing materials to Messrs. Fergerstrom and Vicente. At the next hearing day, October 24, 2016, the University

provided these hard copies to Messrs. Fergerstrom and Vicente. Dec. of Counsel ¶ 15.

Although the Hearing Officer did indicate that Mr. White could be subject to recall, such recall would only be ordered upon a *showing* of good cause. *See* Dec. of Counsel ¶¶ 14, 19. Mr. Fergerstrom claims that since he did not have access to “the necessary written material regarding the offering of the University’s Direct Written Testimonies and it [sic] accompanying exhibits” he therefore “did not have an opportunity to prepare for his cross examination of Mr. White.” Motion (unpaginated). That is simply inaccurate. This perfunctory explanation conveniently ignores the University’s multiple filings regarding its witnesses as well as the public nature of the key relevant documents.

The University informed the parties on July 18, 2016, and again on August 1, 2016, that the subject-matter of Mr. White’s testimony would be an overview of the Conservation District Use Application (“CDUA”). *See Applicant University of Hawai‘i at Hilo’s Witness List* [Doc. 106] and *The University of Hawai‘i at Hilo’s Witness List - Resubmitted Pursuant to Minute Order 13* [Doc. 171] (collectively, “**Witness Lists**”). Mr. Fergerstrom, therefore, cannot suggest that the general subject-matter of and relevant material to Mr. White’s testimony were unknown to him prior to his cross-examination. Furthermore, it is disingenuous to suggest that Mr. Fergerstrom’s only way of reviewing the CDUA, and thus preparing for Mr. White’s cross-examination, was upon receipt of a hard copy from the University.³ Even before Mr. White began his testimony, the CDUA was already a part of the record for these proceedings. *See* Doc. R-1. The CDUA was and is a public document accessible through several sources, including the

³ The frivolous nature of Mr. Fergerstrom’s demand for hard copies is compounded by the fact that during the October 20, 24, and 25, 2016 contested hearings, Mr. Fergerstrom was using an Apple laptop computer throughout the proceedings. *See* Dec. of Counsel ¶ 20. Additionally, Mr. Fergerstrom later refused to use the hard copies provided to him by the University because the copies were not bound. *Id.* ¶ 18.

documents library for the current contested case. The CDUA is at the heart of this proceeding and has also been the focal point of multiple pleadings, including pleadings responded to by Mr. Fergerstrom. *See Perpetuating Unique Educational Opportunities, Inc.'s Motion to Set the Issues* [Doc. 99] and *Opposition to PUEO's Motion to Set the Issues* [Doc. 186]. Therefore, Mr. Fergerstrom's claim that he was completely deprived of his ability to prepare for Mr. White's cross-examination is contrary to the record of this contested case.

Furthermore, Mr. Fergerstrom's claim that he was unprepared to cross-examine Mr. White is contrary to his own representations. During his cross-examination, Mr. Fergerstrom repeatedly stated that he had a great line of questioning prepared for Mr. White, but forgot it when he stepped out to use the restroom. Dec. of Counsel ¶ 10. Contrary to what is represented in the Motion, it appears this trip to the bathroom and not a lack of materials formed the basis for Mr. Fergerstrom's initial request to recall Mr. White. *Id.* ¶ 11. Although Mr. Fergerstrom may have recovered his train of thought and be better prepared to cross-examine Mr. White, he has not demonstrated why he should be entitled to have another opportunity to question a witness that he has already cross-examined.

Mr. Fergerstrom does not identify any area of cross-examination or line of questioning that he was unable to explore during his initial cross-examination effort, nor does he provide any indication of what new and relevant testimony he now seeks to elicit. Rather, the Motion merely reiterates what the Hearing Officer already knows – that Mr. Fergerstrom did not receive hard copies of the materials prior to his cross-examination of Mr. White. Motion (unpaginated). Although the rules of evidence governing administrative hearings are less formal than those governing judicial proceedings, they still require that evidence presented before an agency comport with the basic limitations of relevancy, materiality, and repetition. *See Hawai'i Revised*

Statutes (“HRS”) § 91-10(1) (“[A]ny oral or documentary evidence may be received [in contested cases], but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence[.]”). Mr. Fergerstrom has failed to demonstrate how a second cross-examination of Mr. White would not produce testimony that is irrelevant, immaterial, or unduly repetitious, especially as Mr. White was extensively questioned over a period of three days by fourteen other parties. Dec. of Counsel ¶¶ 8, 9, 13, and 17.

Notably, Mr. Fergerstrom was previously able to cross-examine Mr. White at length and did question him on a variety of topics, including viewplanes, mitigation, excavation, storage of toxic materials, and archaeological surveys. Dec. of Counsel ¶ 9. Additionally, Mr. Fergerstrom attempted to impeach Mr. White regarding perceived discrepancies on maps cited in the Final Environmental Impact Statement for the TMT project, the federal Environmental Impact Statement for the Keck Observatories, and Mr. White’s affiliation with the University and Carlsmith Ball LLP. *Id.* Thus, Mr. Fergerstrom’s questioning of Mr. White fulfilled the basic purpose of cross-examination. “It is well settled that the right of cross-examination protected by the Confrontation Clause of the Sixth Amendment is satisfied where sufficient information is elicited to allow the jury to gauge adequately a witness’s credibility and to assess the witness’s motives or possible biases.” *State v. Acker*, 327 P.3d 931, 963, 133 Hawai‘i 253, 285 (2014); *see also State v. Delos Santos*, 238 P.3d 162, 179, 124 Hawai‘i 130, 147 (2010) (“[I]t is sufficient that the defendant has the opportunity to bring out such matters as the witness’ bias, his lack of care and attentiveness, his poor eyesight, and even . . . the very fact that he was a bad memory.”).

In filing this Opposition, the University is not attempting to deny any party a meaningful opportunity to cross-examine a witness. However, Mr. Fergerstrom has already been given such an opportunity. As such, the Hearing Officer has made it clear that he now bears the burden of

demonstrating *specifically* how his previous opportunity to cross-examine was disadvantaged due to his inability to review the relevant documents and how another opportunity to question Mr. White would result in additional testimony that could not have been (or was not) elicited previously. Without such a showing, Mr. Fergerstrom should not be allowed to bypass the orderly progression of cross-examination that the Hearing Officer has thus far been able to establish throughout the pendency of this contested case. While every party is entitled to cross-examine a witness, it is well within the management authority of the Hearing Officer to impose a standard by which to determine whether or not a party is entitled to *recall* a witness for purposes of cross-examination. *See generally* Hawai'i Administrative Rules § 13-1-32.

Mr. Fergerstrom fails to identify any defects in his cross-examination of Mr. White that can now be cured upon a review of Mr. White's written materials. Because Mr. Fergerstrom has failed to carry his burden and show any good cause to recall Mr. White, the University asks that the Motion be denied.

DATED: Honolulu, Hawai'i, December 23, 2016.



VAN L. SANDISON
TIM LUI-KWAN
JOHN P. MANAUT

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

CASE NO. BLNR-CC-16-002

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

DECLARATION OF COUNSEL

DECLARATION OF COUNSEL

I, IAN L. SANDISON, declare:

1. I am a partner at the law firm of Carlsmith Ball LLP, counsel for UNIVERSITY OF HAWAI'I AT HILO (“**University**”), in the above-captioned matter.
2. I am authorized and competent to testify to the matters set forth herein, and unless otherwise indicated, I make this declaration based upon my personal knowledge
3. Attached hereto as Exhibit 1 is a true and correct copy of pages 1 through 5, along with pages 92, 93 and 138 of the transcript prepared by Jean Marie McManus of the October 3, 2016 prehearing conference in the above-captioned matter, presided over by the Honorable Riki May Amano.
4. On October 11, 2016, Mr. Fegerstrom was emailed electronic copies of all the University's hearing documents and exhibits and was also mailed a flash drive containing electronic copies of all the University's hearing documents and exhibits. Each of Mr. Vicente and Ms. Holi were also mailed a flash drive containing electronic copies of all the University's hearing documents and exhibits.
5. I appeared on behalf of the University during the October 20, 2016 contested case hearing in the above-captioned matter, presided over by the Honorable Riki May

Amano.

6. Based upon a review of the notes of colleagues and my own recollection of the proceedings, during the October 20, 2016 contested hearing in the above captioned matter, Mr. Fergerstom and Mr. Vicente, for the *first time* objected to the University's hearing materials on the grounds that they did not receive hard copies, even though the University's hearing materials had been filed on October 11, 2016 and posted to the Board's Evidentiary Hearing Submittals page, and the parties notified by the method indicated on the Certificate of Service to the *Applicant University of Hawai'i at Hilo's Exhibit List*.

7. Based upon a review of the notes of colleagues and my own recollection of the proceedings, during the October 20, 2016 contested hearing in the above captioned matter, there was some confusion as to whether or not a flash drive with the University's hearing materials was sent to Mr. Fergerstrom. The University has since gone back and confirmed through staff and the October 11, 2016 Certificate of Service attached to *Applicant University of Hawai'i at Hilo's Exhibit List* that Mr. Fergerstrom, Mr. Vicente and Ms. Holi were served flash drives of the University's hearing materials by U.S. mail. Mr. Fergerstrom was also served said materials by email on October 11, 2016.

8. Based upon a review of the notes of colleagues and my own recollection of the proceedings, during the October 20, 2016 contested hearing in the above captioned matter, Mr. Perry White ("**Mr. White**") was questioned by Ms. Ward, Ms. Pisciotta, Mr. Ching, Ms. Case, Mr. Kaiama on behalf of The Hawaiian-Environmental Alliance, Mr. Fergerstrom, Ms. Kihoi, and Mr. Camara.

9. Based upon a review of the notes of colleagues and my own recollection of the proceedings, during the October 20, 2016 contested hearing in the above captioned matter,

Mr. Fergerstrom questioned Mr. White regarding the following: (1) Mr. Fergerstrom's view plane which looks towards Kaua'i; (2) whether Mr. White is familiar with Ka'ohe Mauka and the description of the area, which Mr. Fergerstrom disputed; (3) the definition of mitigation; (4) details regarding the relocation of excavated material, to which Mr. Fergerstrom commented that the location of the excavation was not identified during the site visit; (5) whether or not Section 106 of the National Historic Preservation Act is implicated; (6) the exact location of the Batch Plant and whether or not the Batch Plant is permissible if it is outside the Astronomy Precinct; (7) the extensive impacts to Mauna Kea contained in the Auditor Reports and the Environmental Impact Statement for the Keck Observatories; (8) whether or not Mr. White considered the prior Environmental Impact Statement prepared by the National Aeronautics and Space Administration; (9) possible conflict of interest as a result that Mr. White was hired by the University, which then retained Carlsmith Ball LLP; (10) details of the archaeological features of the northwestern plateau, which Mr. Fergerstrom commented seemed to be lacking.

10. Based upon a review of the notes of colleagues and my own recollection of the proceedings, during the October 20, 2016 contested hearing in the above-captioned matter, Mr. Fergerstrom repeatedly stated that he had developed a good line of questioning for Mr. White, but lost his train of thought when he went to use the restroom and was not able to remember his questions by the time it was his turn to cross-examine.

11. Based upon a review of the notes of colleagues and my own recollection of the proceedings, during the October 20, 2016 contested hearing in the above-captioned matter, Mr. Fergerstrom reserved his right to re-question Mr. White because he was not able to recover his train of thought by the time he had the opportunity to cross-examine Mr. White.

12. I appeared on behalf of the University during the October 24, 2016

contested case hearing in the above-captioned matter, presided over by the Honorable Riki May Amano.

13. Based upon a review of the notes of colleagues and my own recollection of the proceedings, during the October 24, 2016 contested hearing in the above-captioned matter, Mr. White was questioned by Ms. Sleightholm, Mr. Sinkin on behalf of the Temple of Lono, Mr. Kanaele, Mr. Vicente, Mr. Kealoha, and Mrs. Freitas.

14. Based upon a review of the notes of colleagues and my own recollection of the proceedings, during the October 24, 2016 contested hearing in the above-captioned matter, the Honorable Riki May Amano indicated that Mr. Fergerstrom could move to recall Mr. White, but specifically instructing that any such motion must make a showing of good cause for recall to be ordered.

15. Based upon a review of the notes of colleagues and my own recollection of the proceedings, during the October 24, 2016 contested hearing in the above-captioned matter, the next hearing day following the day that Mr. Fergerstrom first lodged his objection to not receiving hard copies of the University's, or any parties' hearing materials, the University provided hard copies of the its hearing materials to Mr. Fergerstrom and Mr. Vicente.

16. I appeared on behalf of the University during the October 25, 2016 contested case hearing in the above-captioned matter, presided over by the Honorable Riki May Amano.

17. Based upon a review of the notes of colleagues and my own recollection of the proceedings, during the October 25, 2016 contested hearing in the above-captioned matter, Mr. White was questioned by Mr. Freitas, Mr. Kanuha, and Mr. Vicente.

18. Based upon a review of the notes of colleagues and my own recollection

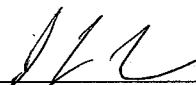
of the proceedings, during the October 25, 2016 contested hearing in the above-captioned matter, Mr. Fergerstrom acknowledged receipt of hard copies of the University's hearing materials the day before, but stated that he was unable to move forward with an opportunity for further cross-examination that day because the documents were not bound for him.

19. Based upon a review of the notes of colleagues and my own recollection of the proceedings, during the October 25, 2016 contested hearing in the above-captioned matter, the Honorable Riki May Amano reiterated that Mr. White would be excused subject to recall, but only upon a showing of good cause.

20. Based upon a review of the notes of colleagues and my own recollection of the proceedings, during the October 20, 24, and 25, 2016 contested hearings in the above-captioned matter, Mr. Fergerstrom was using an Apple laptop computer and actively assessing documents from the DLNR contested case website throughout the proceedings.

This declaration is made upon personal knowledge and is filed pursuant to Rule 7(b) of the Rules of the Circuit Courts of the State of Hawai'i. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, December 23, 2016.



IAN L. SANDISON

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

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'ohē Mauka, Hāmākua,
Hawai'i, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

DLNR Office of Conservation and Coastal
Lands ("OCCL")
dlnr.maunakea@hawaii.gov

MICHAEL CAIN
Office of Conservation and Coastal Lands
1151 Punchbowl Street, Room 131
Honolulu, HI 96813
michael.cain@hawaii.gov
*Custodian of the Records
(original + digital copy)*

DAVE M. LOUIE, ESQ.
CLIFFORD K. HIGA, ESQ.
NICHOLAS R. MONLUX, ESQ.
Kobayashi Sugita & Goda, LLP
dml@ksglaw.com
ckh@ksglaw.com
nrm@ksglaw.com
*Special Deputy Attorneys General for
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*

WILLIAM J. WYNHOFF, ESQ.
Deputy Attorney General
bill.j.wynhoff@hawaii.gov
*Counsel for the BOARD OF LAND AND
NATURAL RESOURCES*

J. DOUGLAS ING, ESQ.
douging@wik.com
ROSS T. SHINYAMA, ESQ.
rshinyama@wik.com
SUMMER H. KAI AWE, ESQ.
skaiawe@wik.com
Watanabe Ing LLP
*Counsel for TMT INTERNATIONAL
OBSERVATORY, LLC*

JOSEPH KUALII LINDSEY CAMARA
kualiic@hotmail.com

HARRY FERGERSTROM
P.O. Box 951
Kurtistown, HI 96760
hankhawaiian@yahoo.com
(via email & U.S. mail)

WILLIAM FREITAS
pohaku7@yahoo.com

TIFFNIE KAKALIA
tiffniekakalia@gmail.com

BRANNON KAMA HANA KEALOHA
brannonk@hawaii.edu

GLEN KILA
makakila@gmail.com

JENNIFER LEINA'ALA SLEIGHTHOLM
leinaala.mauna@gmail.com
leina.ala.s808@gmail.com

LANNY ALAN SINKIN
lanny.sinkin@gmail.com
Representative for the Temple of Lono

MAUNA KEA ANAINA HOU
c/o Kealoha Pisciotta
keomaivg@gmail.com

LINCOLN S.T. ASHIDA, ESQ.
lsa@torkildson.com
NEWTON J. CHU, ESQ.
nic@torkildson.com
Torkildson, Katz, Moore, Hetherington &
Harris
*Counsel for PERPETUATING UNIQUE
EDUCATIONAL OPPORTUNITIES (PUEO)*

DWIGHT J. VICENTE
2608 Ainaola Drive
Hilo, HI 96720-3538
[dwightjvicente@gmail.com](mailto:dwrightjvicente@gmail.com)
(via email & U.S. mail)

RICHARD L. DELEON
kekaukike@msn.com

CINDY FREITAS
hanahanai@hawaii.rr.com

C. M. KAHO'OKAHI KANUHA
kahookahi.kukiaimauna@gmail.com

KALIKOLEHUA KANA ELE
akulele@yahoo.com

MEHANA KIHAI
uhiwai@live.com

STEPHANIE-MALIA: TABBADA
s.tabbada@hawaiiantel.net

HARVEY E. HENDERSON, JR., ESQ.,
Deputy Attorney General
harvey.e.hendersonjr@hawaii.gov
*Counsel for the Honorable DAVID Y. IGE, and
BLNR Members SUZANNE CASE and
STANLEY ROEHRIG*

E. KALANI FLORES
ekflores@hawaiiantel.net

DEBORAH J. WARD
cordylinecolor@gmail.com

YUKLIN ALULI, ESQ.
Law Offices of Yuklin Aluli
yuklin@kailualaw.com
DEXTER KAIAMA, ESQ.
Law Offices of Dexter K. Kaiama
cdexk@hotmail.com
*Counsel for KAHEA: THE ENVIRONMENTAL
ALLIANCE*

IVY MCINTOSH
3popoki@gmail.com
Witness for the Hearing Officer

PATRICIA P. IKEDA
peheakeanila@gmail.com
Witness for the Hearing Officer

CLARENCE KUKAUAKAHI CHING
kahiwaL@cs.com

B. PUALANI CASE
puacase@hawaiiantel.net

PAUL K. NEVES
kealiikea@yahoo.com

WILMA H. HOLI
P. O. Box 368
Hanapepe, HI 96716
*Witness for the Hearing Officer
(no email; mailing address only)*

MOSES KEALAMAKIA JR.
mkealama@yahoo.com
Witness for the Hearing Officer

DATED: Honolulu, Hawai'i, December 23, 2016.



IAN L. SANDISON
TIM LUI-KWAN
JOHN P. MANAUT

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF) CASE NO. BLNR-CC-002
)
 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)
 -----)

MOTIONS HEARING

Held on October 3, 2016, commencing at 10:00 a.m., at
 Grand Nanihoa Hotel, Crown Room, 93 Banyon Drive,
 Hilo, Hawaii 96720.

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JUDGE RIKI MAY AMANO, Hearing Officer

3 JULIE CHINA, Deputy Attorney General

4 TIM LUI-KWON, ESQ.

5 JOHN P. MANAUT, ESQ.

6 IAN L. SANDISON, ESQ.

7 Attorneys for University of Hawai'i

8 RICHARD NAIWIEHA WURDEMAN, ESQ.

9 Attorney for Mauna Kea Anaina Hou, et al

10 DOUGLAS ING, ESQ.

11 ROSS SHINYAMA, ESQ.

12 Attorneys For TMT International Observatory

13 LINCOLN S.T. ASHIDA, ESQ.

14 For PUEO

15

16 LANNY SINKIN

17 Temple of Lono

18 HARRY FERGERSTROM

19 MEHANA KIHAI

20 JENNIFER LEINA'ALA SLEIGHTHOLM

21 TIFFNIE KAKALIA

22 DWIGHT J. VICENTE

23 CINDY FREITAS

24 WILLIAM K. FREITAS

25 STEPHANIE-MALIA TABBADA

1 HEARINGS OFFICER AMANO: Good morning
2 everybody. Before we begin, I would like to have the
3 representations, please.

4 MR. LUI-KWAN: Your Honor, Tim Lui-Kwan and
5 Ian Sandison. With us today is David Lonborg,
6 University of Hawai'i.

7 HEARINGS OFFICER AMANO: Thank you.

8 MR. WURDEMAN: Good morning, Judge Amano.
9 Richard Naiwieha Wurdeman on behalf of Mauna Kea
10 Anaina Hou, et al, Petitioners.

11 Present this morning are Kealoha Pisciotta,
12 Keomailani Von Gogh, Deborah Ward, Clarence Ching and
13 E. Kalani Flores.

14 HEARINGS OFFICER AMANO: Thank you.

15 MR. ING: Douglas Ing and Ross Shinyama
16 representing TMT International Observatory.

17 MR. ASHIDA: Good morning, Your Honor.

18 Lincoln Ashida representing PUEO. Present
19 is Keahi Warfield, president of PUEO. Good morning.

20 HEARINGS OFFICER AMANO: Good morning.
21 Actually in order, I think we have Mr. Fergerstrom.

22 MR. FERGERSTROM: Good morning, Harry
23 Fergerstrom, pro posse suo.

24 HEARINGS OFFICER AMANO: Mehana Kihoi.

25 MS. KIHROI: Mehana Kihoi.

1 HEARINGS OFFICER AMANO: Good morning.

2 C.M. Kaho'okahi Kanuha? Absent.

3 We have Joseph Camara? Joseph Camara is
4 not here.

5 Jennifer Sleightholm.

6 MS. KIHUI: She is on her way. She's
7 stuck on Saddle Road in the construction.

8 HEARINGS OFFICER AMANO: Okay. If you
9 don't mind, when she comes, could you make sure that
10 we notice her?

11 Maelani Lee? No one is responding.

12 Temple of Lono.

13 MR. SINKIN: Good morning, Your Honor.
14 Lanny Sinkin for the Temple of Lono.

15 HEARINGS OFFICER AMANO: Good morning.

16 Kalikolehua Kanaele?

17 MR. WURDEMAN: Judge, he just called my
18 client like two minutes before we started and
19 indicated that he couldn't get off from work this
20 morning, but he would try to get here before the end
21 of hearing. I just wanted to give that to you.

22 HEARINGS OFFICER AMANO: Thank you, Mr.
23 Wurdeman.

24 Tiffnie Kakalia.

25 MS. KAKALIA: Good morning, Tiffnie

1 Kakalia.

2 HEARINGS OFFICER AMANO: Glen Kila? No

3 Glen Kila.

4 Dwight Vicente.

5 MR. VINCENTE: Good morning, Dwight

6 Vicente.

7 HEARINGS OFFICER AMANO: Thank you.

8 Brannon Kamahana Kealoha. Brannon Kealoha.

9 MR. KEALOHA: Good morning. I just want to
10 say I'm present and my perception of the rest
11 respectfully, aloha.

12 HEARINGS OFFICER AMANO: Good morning.

13 Cindy Freitas.

14 MS. FREITAS: Aloha, Cindy Freitas.

15 HEARINGS OFFICER AMANO: Thank you. And
16 William Freitas.

17 MR. FREITAS: Aloha nui kakou, William
18 Freitas is present. Mahalo.

19 HEARINGS OFFICER AMANO: Are there any
20 witnesses here, people that expect to be testifying
21 as witnesses?

22 Is that you Mrs. Holi?

23 MRS. HOLI: Yeah.

24 HEARINGS OFFICER AMANO: Good morning.

25 Just for everyone's information, is it

1 HEARINGS OFFICER AMANO: That's how you're
2 seated. We've been doing this from the beginning.
3 But we made an exception because TIO is willing to go
4 after UH, and Mr. Wurdeman requested it, so they're
5 going to be number two in presentation. Then Mr.
6 Wurdeman is number three. Okay?

7 MR. FERGERSTROM: I don't really have much
8 to say about it. Apparently so, I guess it's okay.

9 HEARINGS OFFICER AMANO: You didn't have to
10 agree with me. Did you understand?

11 MR. FERGERSTROM: I do.

12 HEARINGS OFFICER AMANO: Yes, Mr. Lui-Kwan.

13 MR. LUI-KWAN: Judge Amano, the submission
14 of exhibits and in a binder, is it one set for DLNR
15 and can we actually do distribution electronically to
16 all parties?

17 HEARINGS OFFICER AMANO: Yes and yes. And
18 can you please bring it in a thumb drive.

19 MR. LUI-KWAN: And the other question I
20 have is, we will probably get to this in the next
21 prehearing conference, but it's going to be on
22 whether or not we can do electronic display of
23 exhibits, either by PowerPoint -- we can arrange for
24 the equipment we need.

25 HEARINGS OFFICER AMANO: I think they have

1 a screen here, but I'm not too sure. That's always
2 helpful for everyone to follow along.

3 HEARINGS OFFICER AMANO: Mr. Kealoha.

4 MR. KEALOHA: Could you please clarify
5 November 2nd? You said testimony, and that's the
6 order you gave us of our testimonies. Are we to
7 assume that from November 2nd through the 28th we
8 should be available if we need to cross-examine or
9 testify? Or is there a break between November 2nd
10 and November 22nd?

11 HEARINGS OFFICER AMANO: Oh, yeah, there's
12 a break.

13 I cleared October and pushed everything to
14 November. I'm going to need to clear parts of
15 November so we can accommodate this.

16 MR. KEALOHA: So stop on the 2nd and resume
17 on the 22nd?

18 HEARINGS OFFICER AMANO: Yes, 22nd, 23rd,
19 and then 28. And then we will see if we need more
20 days, and we will see if we can get more days from
21 here, meaning Crown Room.

22 MR. KEALOHA: Mahalo.

23 HEARINGS OFFICER AMANO: Okay, thank you.
24 Anyone else? Mr. Wurdeman.

25 MR. WURDEMAN: I don't want to assume too

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on October 3, 2016 at 10:00 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 10th day of October, 2016, in Honolulu, Hawaii.

/s/ Jean Marie McManus

JEAN MARIE McMANUS, CSR #156