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BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF ) Case No. BLNR-CC-16-002  
)  
A Contested Case Hearing Re Conservation; ) **MEHANA KIHOI'S JOINDER TO TEMPLE**  
Use Application (CDUA) HA-3568 For the ) **OF LONO MOTION FOR**  
Thirty Meter Telescope at the Mauna Kea ) **RECONSIDERATION OF MINUTE**  
Science Reserve, Ka'ohe Mauka, Hamakua, ) **ORDER 43; CERTIFICATE OF**  
Hawai'i TMK(3)4-4-015:009 ) **SERVICE**  
)  
\_\_\_\_\_ ) Hearing Officer: Riki May Amano (Ret.)

**MEHANA KIHOI'S JOINDER TO TEMPLE OF LONO MOTION FOR**  
**RECONSIDERATION OF MINUTE ORDER 43**

**I. INTRODUCTION**

Mehana Kihoi herein joins the Temple of Lono Motion for Reconsideration of Minute Order 43.

As noted by TOL, the Hearing Officer did not schedule any time for parties to respond to objections filed to the admission of exhibits.

As also noted by TOL, the Applicant and TIO filed multiple objections to more than 300 exhibits being moved into evidence.

The Applicant and TIO also reserved the right to file additional objections once the transcripts are available and/or once additional information is available about certain exhibits, and/or as part of the findings of fact and conclusions of law.

This massive filing of objections goes counter to the express intent of the Hearing Officer, as laid out in the Contested Case Hearing.

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The Hearing Officer has admitted into evidence numerous exhibits while excluding others that petitioners were expressly prohibited from introducing with justification during the hearing. Now that Minute order 44 has been filed, the Hearing Officer will now have to again address that extensive material as the motions to reconsider are filed.

Without a full and complete record, Minute Order 43 is untimely, in that it requires petitioners to attempt to address an incomplete record while many exhibits are subject to reconsideration, subject to Minute Order 44. To prematurely require the parties to prepare findings of fact and conclusions of law based on an incomplete record violates HAR §13-1-38.

## II. ARGUMENT

### A. Due process, at a minimum, requires that parties moving exhibits into evidence have an opportunity to respond to objections.

Petitioner Kihoi agrees with TOL that denying the parties sponsoring exhibits the opportunity to respond to objections would be a clear violation of the sponsoring party's due process rights.

With no requirement to provide arguments for the admissibility of each document with the motions seeking admission and no opportunity to respond to any objections, those parties sponsoring exhibits that now face objections have had no opportunity to be heard on the legal and factual bases for admitting the specific documents objected to.

## III. CONCLUSION

Parties were led to believe that all exhibits were going to be admitted subject to weight, so there was no need to file any significant number of objections. The result is that the many opponents of the permit did not file objections. Contrary to the expressed intent of the Hearing Officer, the Applicant and TIO filed thousands of objections, with the promise of more to come. The Applicant and TIO have created a situation where the Hearing Officer has, at the request of UHH and TIO, excluded dozens of exhibits to the detriment of the opponents of the permit application, making some references to exhibits in the transcripts impossible to examine. This creates the potential for a due process challenge to the outcome of the contested case.

Respectfully,  
DATED: April 25, 2017

A handwritten signature in black ink, appearing to read "Mehana Kihoi", written over a horizontal line.

Mehana Kihoi, Pro Se

