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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'ohe Mauka, Hāmakua,
Hawai'i, TMK (3) 4-4-015:009

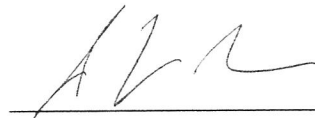
Case No. BLNR-CC-16-002

APPLICANT UNIVERSITY OF HAWAI'I
AT HILO'S **MOTION TO
RECONSIDER MINUTE ORDER NO.
44 [DOC. 553]**; MEMORANDUM IN
SUPPORT OF MOTION; DECLARATION
OF COUNSEL; EXHIBIT 1;
CERTIFICATE OF SERVICE

**APPLICANT UNIVERSITY OF HAWAI'I AT HILO'S
MOTION TO RECONSIDER MINUTE ORDER NO. 44 [DOC. 553]**

Applicant University of Hawai'i at Hilo ("**Applicant**"), through its undersigned counsel, submits this Motion to Reconsider Minute Order No. 44 [Doc. 553] ("**Motion**"). This Motion is made pursuant to Hawai'i Administrative Rules ("**HAR**") §§ 13-1-32(c), 33, and 34, and is based on the supporting memorandum filed herein.

DATED: Honolulu, Hawai'i, April 27, 2017.

A handwritten signature in dark ink, appearing to read 'Ian L. Sandison', positioned above a horizontal line.

IAN L. SANDISON
JOHN P. MANAUT

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

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MEMORANDUM IN SUPPORT OF
MOTION

MEMORANDUM IN SUPPORT OF MOTION

By Minute Order No. 44 [Doc. 553], the Hearing Officer determined what evidence would be received in the above-captioned proceeding. The Hearing Officer’s ruling took into consideration the motions and objections made by the parties as set forth on pages 2 through 5 of Minute Order No. 44.

In consideration of objections made by Intervenor Cindy Freitas, that she “did not have an opportunity to cross-examine the exhibit tough [sic] Mr. Gosser or Ms. Collins,” the Hearing Officer did not admit Applicant Exhibit A-142. Minute Order No. 44 at 16. Applicant hereby moves for reconsideration of that ruling.

Exhibit A-142 is the Archaeological Monitoring Plan In Support of Construction of the Thirty Meter Telescope in the Astronomy Precinct on Mauna Kea, dated May 2013. Although, Mr. Gosser and Ms. Collins were not presented as witnesses, their written direct testimonies are not the sole basis for admission of Exhibit A-142 into evidence. Rather, Exhibit A-142 was introduced into evidence through the cross-examination of Ms. Tiffnie Kakalia on Hearing Day 41, for which Ms. Freitas was present. *See* Ex. 1, Tr. 02/27/17 at 3, 202-203.

Exhibit A-142 was therefore improperly excluded, as it is relevant to the issues presented in this proceeding and does not fall into any of the categories for denial upon which the Hearing

Officer articulated. Importantly, Ms. Kakalia was asked several questions concerning the contents of Exhibit A-142. If it is excluded, the record of Ms. Kakalia's testimony will be incomplete.

In light of the foregoing, Applicant moves the Hearing Officer to reconsider Minute Order No. 44 to admit Exhibit A-142 into evidence.

DATED: Honolulu, Hawai'i, April 27, 2017.



IAN L. SANDISON
JOHN P. MANAUT

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

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

Case No. BLNR-CC-16-002

DECLARATION OF COUNSEL;
EXHIBIT 1

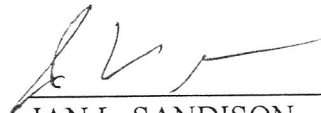
DECLARATION OF COUNSEL

I, IAN L. SANDISON, declare and state as follows:

1. I am a partner at the law firm of Carlsmith Ball LLP, counsel of record for Applicant UNIVERSITY OF HAWAI'I AT HILO 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 an excerpt from the transcript prepared by Laura Savo of the evidentiary hearing held on February 27, 2017 in the above-captioned matter, presided over by Judge Riki May Amano. The highlighting included in this excerpt was added by our law firm for ease of reference.

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, April 27, 2017.



IAN L. SANDISON

1 BOARD OF LAND AND NATURAL RESOURCES

2 STATE OF HAWAI'I

3
4 IN THE MATTER OF) CASE NO. BLNR-CC-002
5 Contested Case Hearing)
6 Re Conservation District)
7 Use Application (CDUA)
8 HA-3568 For The Thirty) VOLUME 41
9 Meter Telescope at the)
Mauna Kea Science)
Reserve, Ka'ohe Mauka,)
Hamakua, Hawai'i TMK)
10 (3)4-4-015:009)
11 _____)
12
13

14 CONTESTED CASE HEARING

15 Held on Monday, February 27, 2017, commencing at
16 9:04 a.m., at the Grand Naniloa Hotel, Crown Room,
17 93 Banyan Drive, Hilo, Hawaii 96720.
18
19
20
21
22
23

24 BEFORE: Laura Savo, CSR #347
25

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	SAMUEL LEMMO	
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1 before getting on the burial council, was actually a 03:13:09
2 councilman for Kamuela, the South Kohala District -- 03:13:14
3 on the county council? 03:13:18

4 A I learned of that in his interview. 03:13:19

5 Q Oh, you did read his interview in the 03:13:23
6 CIA? 03:13:26

7 A No, no, no. In -- as being a 03:13:26
8 councilman -- Kahu Ku Mauna, he shared that. I 03:13:28
9 didn't know who he was before that. 03:13:31

10 Q Yeah. He was police captain as well even 03:13:33
11 before that. 03:13:35

12 A Okay. 03:13:36

13 Q Right. So let me -- so I passeded you 03:13:36
14 another document as well too. It's Exhibit A-142. 03:13:47
15 It's the archaeological monitoring plan in support of 03:13:51
16 construction of the 30-meter telescope in the 03:13:57
17 astronomy precinct of Mauna Kea. Do you see it? 03:14:01

18 A I don't have it. 03:14:02

19 Q Oh, it was the last document I sent up 03:14:05
20 there with Alex. 03:14:07

21 A I just have this (indicating). 03:14:08

22 Q So in May of 2013, you were still on the 03:14:10
23 Kahu Ku Mauna council; is that correct? 03:14:43

24 A Yes. 03:14:45

25 Q Do you recall being asked to review this 03:14:45

1 study or report as well? 03:14:50

2 A I don't recall. 03:14:51

3 Q Okay. Let me refer you to pages -- and I 03:14:52
4 have it marked as well. You can go to page 32. It's 03:14:56
5 under the subheading of "Treatment of Human Remains." 03:15:00

6 A Okay. 03:15:04

7 Q So you'll actually see in, say -- in 03:15:07
8 second paragraph of the subheading "Treatment of 03:15:10
9 Human Remains," that it references "consultation of 03:15:13
10 OMKM, the Kahu Ku Mauna, OHA and the Hawaiian Island 03:15:22
11 Burial Council regarding the relocation or removal of 03:15:27
12 any human remains encountered"; is that correct? 03:15:31

13 A I see it stated here, yes. 03:15:35

14 Q And if you go to the next paragraph "any 03:15:36
15 reinterment plan needed for any burials discovered 03:15:40
16 during the course of the construction 03:15:44
17 consultation" -- it actually says "concurrence" at 03:15:46
18 the bottom of the paragraph; right? "With the 03:15:50
19 concurrence of the Kahu Ku Mauna council, the OMKM 03:15:54
20 and the SHPD." Do you see that? It's the bottom, 03:15:59
21 third paragraph under the subparagraph of "Treatment 03:16:07
22 of Human Remains." 03:16:10

23 A Bottom of the third paragraph on page 33? 03:16:12

24 Q Page 32. 03:16:16

25 A 32. 03:16:19

1 Q Paragraph starting with "if -- if a 03:16:22
2 reinterment is needed." 03:16:26

3 A Okay. I see it. 03:16:29

4 Q Let me refer you now to page 33, the next 03:16:30
5 page. And it's under the subheading -- the third 03:16:33
6 subheading close to the bottom, "Report Preparation." 03:16:37

7 A I see it. 03:16:41

8 Q It also references "Copies of reports 03:16:42
9 will be provided to OMKM, the Kahu Ku Mauna." Do you 03:16:45
10 see that in that paragraph -- 03:16:49

11 A Yes. 03:16:50

12 Q -- at the bottom? And as well as "the 03:16:51
13 completion of field work, monitoring field work, 03:16:55
14 final reports will be submitted to the council"? 03:16:59

15 A I see it stated here. 03:17:03

16 Q So you also stated in your testimony, 03:17:05
17 direct testimony that you don't recall there being 03:17:16
18 any substantive discussions on the council regarding 03:17:19
19 the erection or construction of new structures on the 03:17:23
20 summit area; is that correct? 03:17:26

21 A Can you ask that question again? 03:17:26

22 Q You mentioned in your earlier testimony 03:17:28
23 that you couldn't recall there being any substantive 03:17:30
24 discussion regarding the issue of constructing new 03:17:35
25 structures, new cultural structures in the summit 03:17:40

C E R T I F I C A T E

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

I, LAURA SAVO, a Certified Shorthand Reporter in and for the State of Hawaii, do hereby certify:

That the foregoing proceedings were taken down by me in machine shorthand at the time and place herein stated, and was thereafter reduced to typewriting under my supervision;

That the foregoing is a full, true and correct transcript of said proceedings;

I further certify that I am not of counsel or attorney for any of the parties to this case, nor in any way interested in the outcome hereof, and that I am not related to any of the parties hereto.

Dated this 17th day of March 2017 in
Honolulu, Hawaii.

/S/ Laura Savo
LAURA SAVO, RPR, CSR NO. 347

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STATE OF HAWAI'I

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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:

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