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

Case No. BLNR-CC-16-002

UNIVERSITY OF HAWAI'I AT HILO'S
**OPPOSITION TO THE FLORES-CASE
'OHANA'S MOTION TO
RECONSIDER MINUTE ORDER NO.
43; DECLARATION OF COUNSEL;
EXHIBITS 1 TO 6; CERTIFICATE OF
SERVICE**

**UNIVERSITY OF HAWAI'I AT HILO'S OPPOSITION TO OPPOSITION TO THE
FLORES-CASE 'OHANA'S MOTION TO RECONSIDER MINUTE ORDER NO. 43**

Applicant UNIVERSITY OF HAWAI'I AT HILO ("**University**"), through counsel,
submits its Opposition to the Flores-Case 'Ohana's *Motion to Reconsider Minute Order No. 43*
[Doc 558] ("**Motion**"). The University respectfully requests that, pursuant to the authority
delegated to the Hearing Officer under Hawai'i Administrative Rules ("**HAR**") §§ 13-1-32(c)
and 38(a), the Hearing Officer deny the Motion.

I. INTRODUCTION

The parties to this proceeding have long known that the task of drafting a proposed decision and order, including proposed findings of facts and conclusions of law (collectively, the “FOF/COL”), would be a time-consuming process. In consideration of this fact, the Hearing Officer advised the parties as early as October 2016 to begin drafting their FOF/COL as the hearings progressed, instead of waiting until the hearings concluded. Additionally, the Hearing Officer made accommodations above and beyond what was required by law in order to aid the parties in preparing their FOF/COL in a timely manner. Despite these efforts, the Flores-Case ‘Ohana now argues that the deadline for submission of the FOF/COL (and responses thereto) set forth in Minute Order No. 43 are “unreasonable” and violate their due process rights. The Motion completely ignores the substantial efforts made by the Hearing Officer to accommodate the parties, including the allotment of a **41 day** window (April 19, 2017 to May 30, 2017)¹ for the parties to submit their FOF/COL, following the delivery of the hearing transcripts at designated public libraries. The University submits that the deadlines are more than reasonable and well within the Hearing Officer’s authority under HAR §§ 13-1-32(c) and 38(a).

II. ARGUMENT

The Motion argues that Minute Order No. 43 should be reconsidered because: (A) the deadlines for proposed FOF/COL and responses thereto are unreasonable and violate due process rights; (B) the parties do not have adequate access to the hearing transcripts; and (C) the process for admitting exhibits into evidence has not been finalized—*i.e.*, motions regarding admission of

¹ Under HAR § 13-1-38(a), the ten-day period to submit a proposed decision and order runs from when the transcript were “prepared and available.” According to Minute Order No. 43, which was served on the parties on April 19, 2017, states that the transcripts were prepared and available as of April 18, 2017. For the sake of argument, the University used April 19, 2017 for deadline calculations.

exhibits are still pending. As discussed below, these arguments are unfounded and do not provide a basis to reconsider Minute Order No. 43. Accordingly, the University respectfully submits that the Motion should be denied.

A. THE DEADLINES SET FORTH IN MINUTE ORDER NO. 43 ARE REASONABLE AND DO NOT VIOLATE DUE PROCESS RIGHTS

The Flores-Case ‘Ohana argues that its due process rights have been violated because the deadlines established in Minute Order No. 43 are “unreasonable.” The Motion does not cite to any authority, but merely argues that the time allotted is not enough, because of the “volume, extent and complexity of the exhibits, motions, minute orders, transcripts, and other filings[.]” Mot. at 2. The subjective opinion of the Flores-Case ‘Ohana cannot serve as a basis for establishing that the deadlines imposed by Minute Order No. 43 are unreasonable.

The Flores-Case ‘Ohana attempts to bolster its argument by noting that the Hearing Officer took “significantly more time than anticipated to issue [Minute Order] No. 44,” demonstrating that more time is needed for the parties to digest the record. Mot. at 2. This argument is unavailing as it ignores the fact that the Hearing Officer repeatedly cautioned the parties—since as early as October 31, 2016—that they should be working on preparing their draft FOF/COL. *See* Ex. 1, Tr. 10/31/16 at 249:22-252:4. The parties have already had six months to prepare their submissions. The fact that the Flores-Case ‘Ohana did not heed the Hearing Officer’s advice does not provide grounds for reconsideration of Minute Order No. 43.

Indeed, the Motion ignores the substantial efforts made by the Hearing Officer to ensure that the parties have sufficient time to prepare their FOF/COL. First, on numerous occasions, the Hearing Officer stated that while the rules only provide for ten days by default, she intended to establish an extended two-week deadline for parties to submit their FOF/COL. *See, e.g.*, Ex. 1, Tr. 10/31/16 at 249:22-250:1 (“So once the testimony is over, then I will give you . . . [t]wo

weeks from the filing of the transcripts, to submit Findings of Fact, Conclusions of Law, Decision and Order.”); Ex. 2, Tr. 11/16/16 at 11:23-11:24 (“And my intention at this time is to just give you two weeks [to submit your findings].”).

Second, despite the Hearing Officer’s original intent to set a two week deadline for the submission of FOF/COL, she expressly stated that after consideration of the length of the evidentiary hearings, she would increase the time to respond to 30 days, rather than the originally planned two weeks, to give the parties additional time to prepare. *See* Ex. 3, Tr. 3/1/17 at 255:24-256:5 (“I know we have gone real long, and in case anybody is interested, today was the 43rd day of our hearing. . . . And so, it's a lot. So, therefore, my intention is to give you 30 days after the transcripts are completed. Now, obviously, you are going to be doing a lot of work before that.”). Again, the Hearing Officer specifically warned the parties against waiting until the transcripts were available to begin drafting their FOF/COL. *See id.* at 259:24-260:2 (“If you think you are going to read through 40 plus volumes of transcripts to then begin writing your decision and order, it's not going to happen. I don't think anybody is going to be able to do it that way.”).

Third, at the suggestion of the Office of Conservation and Coastal Lands (“**OCCL**”), the Hearing Officer also made samples of proposed FOF/COL available to the parties nearly five months before the close of the hearing. *See* Ex. 1, Tr. 10/31/16 at 250:4-11 (“it was [Michael Cain’s] idea to put some sample findings and conclusions, the decisions and orders into the Document Library”); Doc Nos. 408a, 408b, 408c; Ex. 4, Tr. 12/20/16 at 241:14-241:17 (“[Y]ou will be helping yourself a great deal if you take a look at the samples that were uploaded in October in the Documents Library....”).

Fourth, throughout the proceeding, the Hearing Officer repeatedly reminded the parties

that they should begin working on their proposed FOF/COL throughout the hearing. *See, e.g.*, Ex. 2, Tr. 11/16/16 at 11:12-11:14 (“I’m going to ask that you use the in-between breaks to please start your drafting [of the findings and conclusions], because these are pretty extensive documents.”); Ex. 5, Tr. 12/13/16 at 218:4-7 (“Don’t forget folks, we have the Findings that you need to work on. Please take a look at it and sketch out, try to get information. Do yourself a favor.”); Ex. 4, Tr. 12/20/16 at 241:11-241:18 (“[P]lease don’t forget to work on your Findings of Fact, Conclusions of Law, Decision and Order. I know it’s asking a lot, but it’s a lot of work to do that, and you will be helping yourself a great deal if you take a look at the samples that were uploaded in October in the Documents Library, and you start to at least put an outline together for yourself[.]”).

Finally, the Hearing Officer arranged for copies of the transcripts to be made available at designated public libraries in order to assist the parties in their preparation of their FOF/COL. This accommodation was not required by law, but was arranged by the Hearing Officer and provided by the State as a courtesy to the parties to aid in their preparation of FOF/COL.²

In consideration of the above, for the Flores-Case ‘Ohana to now accuse the Hearing Officer of being unreasonable in setting the deadlines, despite her countless attempts to accommodate the parties, shows that the Motion is nothing more than a thinly veiled effort to try to create a procedural issue where there is none.

B. THE FLORES-CASE ‘OHANA HAS NO DUE PROCESS RIGHT TO COPIES OF THE HEARING TRANSCRIPTS

The Flores-Case ‘Ohana argues that the deadlines imposed by Minute Order No. 43 are unreasonable in part due to the fact that the hearing transcripts at the designated public libraries are only available during limited hours. This argument ignores the fact that the parties have no

² As an additional note, each day of the proceedings was televised and available at the naleo.tv archive.

due process rights to access copies of the hearing transcripts for which they have not paid in the first place. As mentioned above, the Hearing Officer opted to make the hearing transcripts available as an added courtesy, not because it was required by law. As set forth in HAR § 13-1-32(d), the Hearing Officer's responsibility regarding hearing transcripts is merely to ensure that a "verbatim record" (*i.e.*, a transcript) is taken unless waived by the parties. In the event a party desires copies of hearing transcripts, the rules provide that such party "may obtain a certified transcript of the proceedings upon payment of the fee established by law for a copy of the transcript." *Id.* Accordingly, there is no requirement that copies of the hearing transcripts be made publicly available to the parties, and for the Flores-Case 'Ohana to now argue that its due process rights are being violated because it has limited access to what is a courtesy accommodation, is not only disingenuous, but also disrespectful of the Hearing Officer's efforts to provide additional assistance to the parties.

Moreover, the Flores-Case 'Ohana is well aware that it has no right to access publicly available copies of the hearing transcript, as evidenced by the fact that it had to purchase transcripts for the previous contested case in 2011. *See* Ex. 6, Tr. 12/16/16 at 234:9-18 (Kealoha Pisciotta acknowledging that the Petitioners in the 2011 contested case, which included the Flores-Case 'Ohana, purchased transcripts of the proceeding). Despite being aware that no such right exists, the Flores-Case 'Ohana nevertheless attempts to argue here that its due process right to full and unfettered access to free copies of the hearing transcript is being violated, further demonstrating the insincere nature of their argument.

C. PENDING MOTIONS DO NOT AFFECT THE TIMELINE FOR SUBMISSION OF FOF/COL

The Flores-Case 'Ohana contends that deadlines for submission of proposed FOF/COL cannot be set until rulings relating to the admissibility of evidence are final. The University


notes that the Flores-Case ‘Ohana cites no authority to support this argument. Furthermore, the Hearing Officer has broad authority under the Hawai‘i Administrative Rules (“**HAR**”) to regulate the course and conduct of the hearing, including the setting of deadlines. HAR § 13-1-32(c).

To the extent Flores-Case ‘Ohana is attempting to parrot the Temple of Lono’s similar argument based on HAR § 13-1-38(a), that argument fails. As discussed in the University’s Opposition to the Temple of Lono’s Motion,³ HAR § 13-1-38(a) provides that, “[a]fter all evidence has been taken, the parties may submit, within the time set by the presiding officer, a proposed decision and order which shall include proposed findings of facts and conclusions of law.” Based on the plain reading of the rule, the rule limits only when the parties may submit their proposed FOF/COL. It imposes no limitation on when the presiding officer may set submission deadlines. Therefore, the Flores-Case ‘Ohana’s argument not only lacks legal support, it contradicts it; and, as such, the Motion fails as a matter of law.

III. CONCLUSION

For the reasons set forth above, the University respectfully requests that the Hearing Officer deny the Motion.

DATED: Honolulu, Hawai‘i, May 2, 2017.



IAN L. SANDISON
JOHN P. MANAUT
LINDSAY N. MCANEELEY
Attorneys for Applicant
UNIVERSITY OF HAWAI‘I AT HILO

³ To the extent applicable, the University hereby incorporates by reference its arguments set forth in its Opposition to the Temple of Lono’s Motion for Reconsideration of Minute Order No. 43 [Doc. No. 559].

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

Case No. BLNR-CC-16-002

DECLARATION OF COUNSEL;
EXHIBITS 1 TO 6

DECLARATION OF COUNSEL

I, IAN L. SANDISON, declare:

1. I am an attorney with Carlsmith Ball LLP, counsel for Applicant 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 personal knowledge.
3. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the transcript prepared by Jean Marie McManus of the evidentiary hearing held on October 31, 2016 in the above-captioned matter, presided over by Judge Riki May Amano.
4. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the transcript prepared by Carol E.M. Sugiyama of the evidentiary hearing held on November 16, 2016 in the above-captioned matter, presided over by Judge Riki May Amano.
5. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts from the transcript prepared by Carol E.M. Sugiyama of the evidentiary hearing held on March 1, 2017 in the above-captioned matter, presided over by Judge Riki May Amano.

6. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts from the transcript prepared by Jean Marie McManus of the evidentiary hearing held on December 20, 2016 in the above-captioned matter, presided over by Judge Riki May Amano.

7. Attached hereto as **Exhibit 5** is a true and correct copy of excerpts from the transcript prepared by Jean Marie McManus of the evidentiary hearing held on December 13, 2016 in the above-captioned matter, presided over by Judge Riki May Amano.

8. Attached hereto as **Exhibit 6** is a true and correct copy of excerpts from the transcript prepared by Jean Marie McManus of the evidentiary hearing held on December 16, 2016 in the above-captioned matter, presided over by Judge Riki May Amano.

9. The highlighting included in these excerpts were added by our law firm for ease of reference.

This declaration is made upon personal knowledge. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, May 2, 2017.



IAN L. SANDISON

EXHIBIT 1

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) VOLUME 6
Telescope at the Mauna Kea)
Science Reserve, Ka'ohe)
Mauka, Hamakua, Hawai'i)
TMK (3) 4-4-015:009)
-----)

CONTESTED CASE HEARING

Held on October 31, 2016, commencing at 9:00 a.m., at
Grand Naniloa Hotel, Crown Room, 93 Banyan Drive,
Hilo, Hawaii 96720.

BEFORE: Jean Marie McManus, CSR #156

1 hearings that we have to remain somewhat flexible but
2 efficient. All right.

3 So, Mr. Ching, you got those dates? You
4 like those dates?

5 MR. CHING: Clarence Ching, yes, I have.
6 My most, the date of most concern was November 28th
7 and then you heard about that, but since it's been
8 scratched, I'm in good shape. I will --

9 HEARINGS OFFICER AMANO: Well, what
10 happens -- it's been scratched.

11 MR. CHING: Yes, so that was the date I
12 really wanted to have off.

13 HEARINGS OFFICER AMANO: Okay.

14 MR. CHING: Other than that, I had an out
15 of state scheduled for the end of November, I have
16 already cancelled for this hearing. So thank you.

17 HEARINGS OFFICER AMANO: I'm still working
18 on mine, various things. All right. So great.

19 Now, just because I -- it's been my
20 practice to kind of let everyone know what's coming
21 down, give you as much notice as possible.

22 So once the testimony is over, then I will
23 give you -- it's a little complicated. Two weeks
24 from the filing of the transcripts, to submit
25 Findings of Fact, Conclusions of Law, Decision and

1 Order. Okay.

2 That's going to be way down after the last
3 witness. All right. Way down.

4 So what I'm saying is, there's some gaps
5 now. And what we did was, I asked Mr. Cain. He
6 actually asked me, it was his idea to put some sample
7 findings and conclusions, the decisions and orders
8 into the Document Library. It was uploaded today.
9 So you'll see samples A, B and C. So take a look and
10 see what you can do in advance to work it out. I
11 have to do the same thing.

12 And so at the end of all the testimony, you
13 still have time because, I don't know how long it's
14 going to take to get all the transcripts in. It's
15 usually not immediate. It's usually a couple weeks
16 after that. So you can be working on your -- the way
17 we do it is you work on your findings, and then when
18 the transcripts come, and we're working on arranging
19 for or trying to figure out how you can access the
20 transcripts because the findings have to refer to
21 line and page, page and line.

22 You're going to want to say this witness
23 testified about this and in parenthesis you'll put,
24 you know, November 2nd, page 11, line 22, to the next
25 page line 15, whatever it is.

1 So we usually use those references so that
2 we can all go right to the record. That's why I've
3 been trying to be meticulous about making the record
4 for you folks because once I'm out, I'm out. I don't
5 need it. You will need it.

6 All right. So having said that, I'm going
7 to repeat it again. Samples have been uploaded so
8 you can take a look at what the findings and
9 conclusions and decisions look like. Right. It's
10 just a kind of samples, they're not related to Mauna
11 Kea but other kinds. So you take a look and everyone
12 will have an opportunity to submit it by a deadline.

13 So what will happen is I will state it's
14 two weeks after the transcripts are done. As soon as
15 I know the transcripts are done, I'll issue a minute
16 order. And I'll say, minute order whatever number it
17 is by then, transcripts have been submitted on this
18 date. The deadline for submission of the findings
19 and conclusions are here, and then you will have two
20 weeks to read everybody's and then respond, if you
21 wish.

22 So it's a process that we're following.
23 You'll have a chance to respond to each other's,
24 whatever you want to do.

25 Meanwhile, you know, I'm going to be

1 looking forward to hearing from everyone, reviewing
2 all of yours as well as the responses, and issuing my
3 own findings and conclusions which I'm going to have
4 to do. Okay.

5 So we will continue to use the Documents
6 Library. I think it's been pretty effective for all
7 of us.

8 All right. And before recognizing those
9 who want to speak, unless you have to speak on this,
10 you should want to talk about Wednesday's schedule
11 and then I'll close with any other comments that you
12 need to make. Okay. All right.

13 So, Mr. Lui-Kwan, can you tell us about
14 Wednesday?

15 MR. LUI-KWAN: And, Judge, on Wednesday we
16 will bring on Mr. Baybayan, our first witness. We
17 will also have Robert McLaren, the associate director
18 of the IFA.

19 HEARINGS OFFICER AMANO: Okay.

20 MR. LUI-KWAN: We'll --

21 HEARINGS OFFICER AMANO: Two is enough.

22 MR. LUI-KWAN: Okay.

23 HEARINGS OFFICER AMANO: So everybody be
24 prepared for Mr. Baybayan with possibly -- is it
25 Dr. McLaren?

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on October 31, 2016 at 9:00 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 31st day of October, 2016, in Honolulu, Hawaii.

/s/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #156



EXHIBIT 2

13:04:02 1

BOARD OF LAND AND NATURAL RESOURCES

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STATE OF HAWAII

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IN THE MATTER OF) CASE NO. BLNR-CC-16-002

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)

13:04:02 5

Contested Case Hearing Re)

Conservation District Use)

Application (CDUA) HA-3568)

6

For the Thirty Meter)

Telescope at the Mauna Kea)

7

Science Reserve, Ka'ohe)

Mauka, Hamakua, Hawaii)

8

TMK (3)4-4-015:009)

VOLUME 9

9

13:04:02 10

11

TRANSCRIPT OF CONTESTED CASE HEARING

12

13

Taken at the Grand Naniloa Hotel, Crown Room,

14

93 Banyan Drive, Hilo, Hawaii, 96720 commencing at

13:04:02 15

9:00 a.m., on Wednesday, November 16, 2016.

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REPORTED BY: CAROL E.M. SUGIYAMA, RPR, CSR NO. 295

13:04:02 20

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24

25

09:11:57 1 to start to change when we're in the Petitioners' side
2 of the case, and, of course, the number of witnesses
3 will probably change. But that is entirely up to you
4 folks, and we'll deal with it as we go forward.

09:12:09 5 The other thing I wanted to remind you of,
6 very, very important, you might remember that I told you
7 we uploaded samples of the findings and conclusions. We
8 gave you three different samples. They have nothing to
9 do with this case. I don't think they have anything to
09:12:22 10 do with telescopes. I don't know, I didn't look at them
11 myself, but I certainly will.

12 I'm going to ask that you use the in-between
13 breaks to please start your drafting, because these are
14 pretty extensive documents. And it's my intention to
09:12:38 15 give you, once we close the evidence, the court reporter
16 will need some time to complete her transcript, and
17 we're still working on the transcripts and trying to
18 check on whether they can be made available or not.

19 But after the transcripts are completed by the
09:12:57 20 court reporter, that is going to trigger, and I'll do it
21 by Minute Order, that is going to trigger the time you
22 have to submit your findings.

23 And my intention at this time is to just give
24 you two weeks. We can talk about that as we go forward,
09:13:11 25 because we have to evaluate it at the moment when we

16:23:24 1

2

C E R T I F I C A T E

3

STATE OF HAWAII

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4

) SS.

COUNTY OF HONOLULU

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16:23:24 5

6

I, CAROL E.M. SUGIYAMA, C.S.R., do hereby

7

certify:

8

That on November 16, 2016, at 9:00 a.m.,

9

the proceedings contained herein was taken down by me in

16:23:24 10

11

the 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.

16:23:24 15

16

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.

18

19

DATED: December 21, 2016

16:23:24 20

21

S/S Carol E.M. Sugiyama

22

CAROL E.M. SUGIYAMA, C.S.R. #295

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EXHIBIT 3

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 Use)
 Application (CDUA) HA-3568)
 For the Thirty Meter)
 Telescope at the Mauna Kea)
 Science Reserve, Ka'ohe)
 Mauka, Hamakua, Hawaii) VOLUME 43
 TMK (3)4-4-015:009)
)

TRANSCRIPT OF CONTESTED CASE HEARING

Taken at the Grand Naniloa Hotel, Crown Room,
 93 Banyan Drive, Hilo, Hawaii, 96720 commencing at
 9:00 a.m., on Wednesday, March 1, 2017.

REPORTED BY: CAROL E.M. SUGIYAMA, RPR, CSR NO. 295

17:06:01 1 When you write your decision and order and
2 proposed decision and order and findings of fact, that
3 is what you have to rely on, those exhibits.

4 And, again, I'll close the documentary
17:06:16 5 portion. So no more documents, no more testimony. And
6 that's it, so no more testimony after tomorrow. And I
7 know I'm repeating myself, but I want to really make
8 sure it's understood and heard. No more testimony after
9 tomorrow. No more documents after March 9th.

17:06:33 10 So you may have to submit some of the added
11 exhibits that were identified in the course of the
12 examination of witness. I get that that has to be
13 uploaded, and you want to move that in. And so that is
14 why I'm giving you the extra time to do that, gather
17:06:49 15 everything and put it all in one document.

16 I'll try to find out tonight the estimated
17 time for the completion of the transcripts. Pursuant to
18 rule, the deadline for submission of the proposed
19 decision and order including the findings of fact and
17:07:11 20 conclusion of law is 10 days. All along, I've been
21 saying to you all, well, two weeks sound more reasonable
22 to me.

23 But I told you I would reconsider at the end.
24 I know we have gone real long, and in case anybody is
17:07:26 25 interested, today was the 43rd day of our hearing. And

17:07:30 1 Mr. Kanaele is Witness No. 68. And so, it's a lot.
2 So, therefore, my intention is to give you 30
3 days after the transcripts are completed.
4 Now, obviously, you are going to be doing a
17:07:48 5 lot of work before that. And then once the transcripts
6 are completed, I'll have to issue a minute order laying
7 out the next deadline. And the next deadline will be 30
8 days from that to submit your proposed decision and
9 order, findings of fact, and conclusions of law.

17:08:06 10 I don't have a clue right now when that is
11 going to be because it's triggered by the transcript.
12 And I don't know when that is going to be completed.
13 Thereafter, after your 30 days, the proposals are in and
14 you will have two weeks from there to send your
17:08:24 15 objections, replies, joinders and whatever.

16 And then after that, I'll be issuing my own
17 decision and order, proposed decision and order and
18 recommendations to the Board. You might take a look at
19 the Hawaii Administrative Rules that lay out the next
17:08:44 20 process, which by then is out of my hands.

21 So, I can't give you any specific dates except
22 ones that I just gave you for the exhibits. Really
23 important, March 9th, documentary exhibits. You have a
24 week to object. A week after that, you will get a
17:09:03 25 minute order saying to you, these are the exhibits, this

17:09:06 1 is the evidence I'm going to consider. Okay. Any
2 questions?

3 Professor.

4 MR. FLORES: Just some clarity regarding the
17:09:21 5 30 days after the transcripts are completed. Is that 30
6 days after the transcripts are available to view?

7 So it might be completed one day, but access
8 to them, that's the question. So is it dependent upon
9 access.

17:09:35 10 HEARINGS OFFICER AMANO: Well, I think our
11 intention is to make it as close as possible to the same
12 time but, in fairness, it will be once we get the
13 transcripts and identify. I'll let you know that the
14 copies have been made and distributed, it could be an
17:09:52 15 extra week, I don't know.

16 MR. FLORES: Is it possible that if there are
17 some transcripts that are already finished that they
18 could be put out, because the last contested case, there
19 were hundreds of pages of transcripts. I believe this
17:10:06 20 is like thousands of pages of transcripts. And so just
21 to take in that volume of transcripts, if there is a way
22 or if there is something already available, could it be
23 put out already. I mean, we're in the process, but if
24 there is something that we can start with.

17:10:22 25 HEARINGS OFFICER AMANO: I asked myself and

17:10:23 1 the answer is we're going to distribute the transcripts
2 when they are completed.

3 MR. FLORES: In its entirety.

4 HEARINGS OFFICER AMANO: Yes.

17:10:31 5 MR. FLORES: Okay, that is my question.

6 Thank you.

7 HEARINGS OFFICER AMANO: Ms. Ward.

8 MS. WARD: Is there any chance it could be 30
9 working days, as in Monday through Friday?

17:10:41 10 HEARINGS OFFICER AMANO: No.

11 MS. PISCIOTTA: I'm trying formulate my
12 question. Are we going to do it simultaneously, so they
13 submit their proposed decision and order, and we do,
14 then we have an opportunity to object to those, so
17:11:02 15 another 10 days after?

16 HEARINGS OFFICER AMANO: Two weeks.

17 MS. PISCIOTTA: Two weeks.

18 HEARINGS OFFICER AMANO: Yes.

19 MS. PISCIOTTA: Okay, I just needed to know

17:11:13 20 that. Are we going to call those exceptions or
21 something or objections?

22 HEARINGS OFFICER AMANO: You guys call it
23 whatever you feel like calling it. I gave up trying to
24 set up a template. But I don't know what you mean --

17:11:25 25 objections, or responses, replies, joinders, the

17:11:31 1 deadline is going to be two weeks after the deadline for
2 the proposed decision and order.

3 MS. PISCIOтта: Right, okay.

4 HEARINGS OFFICER AMANO: The first question
17:11:42 5 you said was: Is it simultaneous. The answer is, yes,
6 kind of. Because if everybody submits it on the
7 deadline, then it is simultaneous. But if some people
8 submit early, which they can, it is what it is.

9 Nonetheless, the reply will be triggered by
17:12:01 10 the 30-day deadline that I will articulate by minute
11 order.

12 MS. PISCIOтта: Okay. I just wanted to say
13 that I think the last time we had six days or eight days
14 of hearing. And we had 30 days before. And so, I just
17:12:19 15 want to mark my objection that I think we might need a
16 little longer but...

17 HEARINGS OFFICER AMANO: Well, I've been
18 thinking two weeks, as you know. HAR says 10 days, and
19 so I'm thinking 30 days will be sufficient, but I've
17:12:34 20 been asking everybody to start working on it for awhile.
21 And you need to have that framework, so that when the
22 transcripts come, what you are just matching up is line
23 and page and accuracy as to the actual statement.

24 If you think you are going to read through 40
17:12:49 25 plus volumes of transcripts to then begin writing your

17:12:54 1 decision and order, it's not going to happen. I don't
2 think anybody is going to be able to do it that way.
3 So, you really have to be working from the
4 moment we end and starting to put your arguments
17:13:07 5 together. And, really, the transcripts are just to fill
6 in the blanks, okay.

7 MS. PISCIOTTA: Okay.

8 HEARINGS OFFICER AMANO: Thank you.

9 Mrs. Freitas?

17:13:19 10 MS. FREITAS: Aloha. I object to the 30 days
11 because you minusing the days that the library is not
12 even open. And if there is a holiday, it limits us to
13 the dates, so you're losing eight days out of 30 days
14 automatically. So, if we can have that eight days and
17:13:43 15 if there's holidays applied to that.

16 Also does that include ordering the transcript
17 and what is the process and how long is the process.
18 Does that factor into the days?

19 HEARINGS OFFICER AMANO: Those are good
17:13:59 20 questions. I don't have control over production of the
21 copies of the transcripts, I can ask.

22 All right. Anyone else?

23 So tomorrow let's prepare to be focused and
24 prepare to stay a little longer if we have to because
17:14:21 25 we're going to finish all of the witnesses.

17:14:23 1 Mr. Ono.
2 MR. ONO: If someone files their motion to
3 admit exhibits early, is it seven days from that date or
4 is it still March 16th.

17:14:33 5 HEARINGS OFFICER AMANO: March 16th. We don't
6 want moving targets. Much easier if we don't have a
7 moving target.

8 Anything else?
9 Mr. Freitas.

17:14:39 10 MR. FREITAS: Any other supplemental exhibits
11 deadline is March 9th?

12 HEARINGS OFFICER AMANO: Yes. But remember
13 that your deadline for the motions is March 9th and so
14 better to upload everything beforehand.

17:14:58 15 You will have a week because after tomorrow
16 we're done with the testimonies.

17 MR. FREITAS: Right. But if I was starting on
18 preparing my facts and findings, at this moment, before
19 you even accept the exhibits, how would I know that?

17:15:21 20 HEARINGS OFFICER AMANO: That's good question.
21 I think what I would do is I would assume that
22 it's going to be admitted, and if it's not admitted, you
23 cross it off and figure out something else.

24 MR. FREITAS: Or argue the point?

17:15:33 25 HEARINGS OFFICER AMANO: No argument anymore.

17:15:34 1 MR. FREITAS: I don't want to argue but, you
2 know.

3 HEARINGS OFFICER AMANO: No, we're all tired
4 of arguing.

17:15:39 5 MR. FREITAS: Okay, Aloha.

6 HEARINGS OFFICER AMANO: Aloha.

7 Anything else?

8 Everybody, thank you very much. We'll see you
9 tomorrow morning at 9:00 a.m.

17:15:48 10 (The proceeding adjourned at 5:15 p.m.)

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STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, CAROL E.M. SUGIYAMA, C.S.R., do hereby
certify:

That on March 1, 2017, at 9:00 a.m., the proceedings contained herein was taken down by me in the 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: March 29, 2017

S/S Carol E.M. Sugiyama

CAROL E.M. SUGIYAMA, C.S.R. #295
Certified Shorthand Reporter

EXHIBIT 4

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) VOLUME 19
Telescope at the Mauna Kea)
Science Reserve, Ka'ohe)
Mauka, Hamakua, Hawai'i)
TMK (3) 4-4-015:009)
-----)

CONTESTED CASE HEARING

Held on December 20, 2016, commencing at 9:00 a.m.,
at Grand Naniloa Hotel, Crown Room, 93 Banyan Drive,
Hilo, Hawaii 96720.

BEFORE: Jean Marie McManus, CSR #156

1 yet, and I don't want to have to do that while in
2 Pennsylvania, so I'm not going to commit to be able
3 give my witness testimony on Thursday.

4 HEARINGS OFFICER AMANO: Ms. Ward, with all
5 due respect, I cannot commit to you that you won't
6 be. So we know what the plan is, but I know that
7 you'll need to consult with others, and I'll wait to
8 hear.

9 MS. WARD: We will do our best.

10 HEARINGS OFFICER AMANO: Thank you very
11 much. Okay, everybody, we'll see -- oh, please don't
12 forget to work on your Findings of Fact, Conclusions
13 of Law, Decision and Order. I know it's asking a
14 lot, but it's a lot of work to do that, and you will
15 be helping yourself a great deal if you take a look
16 at the samples that were uploaded in October in the
17 Documents Library, and you start to at least put an
18 outline together for yourself, because if you wait
19 until the end, you're going to be shortchanged a lot.
20 It's a lot of work. So that's the only reminder I
21 want to give other than my happy holidays to
22 everybody, and see you on the 3rd at 9:00 o'clock.

23 (The proceedings adjourned at 5:00 o'clock
24 p.m.)
25

1 CERTIFICATE
STATE OF HAWAII)
2) SS.
COUNTY OF HONOLULU)
3

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on December 20, 2016, at 9:00 a.m., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

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

15 Dated this 20th day of December, 2016, in
16 Honolulu, Hawaii.

17
18
19 /S/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
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EXHIBIT 5

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) VOLUME 16
Telescope at the Mauna Kea)
Science Reserve, Ka'ohe)
Mauka, Hamakua, Hawai'i)
TMK (3) 4-4-015:009)
-----)

CONTESTED CASE HEARING

Held on December 13, 2016, commencing at 9:00 a.m.,
at Grand Naniloa Hotel, Crown Room, 93 Banyan Drive,
Hilo, Hawaii 96720.

BEFORE: Jean Marie McManus, CSR #156

1 will, but I hope you are not planning to take any
2 holidays.

3 MR. SHINYAMA: I'm not.

4 HEARINGS OFFICER AMANO: Don't forget,
5 folks, we have the Findings that you need to work on.
6 Please take a look at it and sketch out, try to get
7 information. Do yourself a favor.

8 So I'm asking TIO if they can please try to
9 let us know who the witnesses will be for Monday and
10 Tuesday, and do it by email, and I think in Mr.
11 Vicente's case, you may have to do it by telephone.
12 Is that okay with you? And would you provide the
13 telephone number to Mr. Shinyama?

14 MR. VICENTE: He has my number.

15 HEARINGS OFFICER AMANO: Your e-mail, your
16 name, phone number, we are going to post it up on the
17 mountain. Just kidding. All right.

18 So, Mr. Shinyama, thank you for your
19 cooperation, and I really appreciate it if we can get
20 done so folks can start to prepare.

21 So this is what's going to happen. TIO
22 will then begin to put their witnesses on. The next
23 in line will then be the University. And then after
24 that, we go down the road for the others. They will
25 be able to ask questions after TIO, because they're

1 CERTIFICATE
2 STATE OF HAWAII)
3) SS.
4 COUNTY OF HONOLULU)

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8 machine shorthand and was thereafter reduced to
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11 correct copy of the proceedings had in the foregoing
12 matter.

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

16 Dated this 13th day of December, 2016, in
17 Honolulu, Hawaii.

18
19 /S/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #157
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EXHIBIT 6

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) VOLUME 17
Telescope at the Mauna Kea)
Science Reserve, Ka'ohe)
Mauka, Hamakua, Hawai'i)
TMK (3)4-4-015:009)
-----)

CONTESTED CASE HEARING

Held on December 16, 2016, commencing at 9:00 a.m.,
at Grand Naniloa Hotel, Crown Room, 93 Banyan Drive,
Hilo, Hawaii 96720.

BEFORE: Jean Marie McManus, CSR #156

1 that later as we see how far we go.

2 I understand two weeks is tight, but we
3 have tried the best we can to let folks know what it
4 has to look like, that's why the samples are up since
5 October, and there's a big gap coming along, so we
6 all start working on the structure of that finding,
7 so that we can do it efficiently in the time given.
8 I hear you.

9 MS. PISCIOтта: One last point. You know,
10 we did this contested case hearing already. BLNR
11 made a ruling in away that the Supreme Court objected
12 to and sent us back. So I want to object
13 specifically for that, because we've already paid for
14 these transcripts from the last one. So this is
15 another burden. And it is a burden for everyone.

16 I don't want to say that it isn't for
17 everyone else, but we have already done this once
18 before.

19 HEARINGS OFFICER AMANO: But these
20 transcripts reflecting the things that have
21 transpired during this contested case hearing, so
22 they will be entirely different.

23 MS. PISCIOтта: I understand, but as
24 citizens who are just standing up for protection of
25 our rights, BLNR's failure to do things properly the

1 CERTIFICATE
2 STATE OF HAWAII)
3) SS.
4 COUNTY OF HONOLULU)

5 I, JEAN MARIE McMANUS, do hereby certify:

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7 proceedings contained herein was taken down by me in
8 machine shorthand and was thereafter reduced to
9 typewriting under my supervision; that the foregoing
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11 correct copy of the proceedings had in the foregoing
12 matter.

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

16 Dated this 16th day of December, 2016, in
17 Honolulu, Hawaii.

18
19 /S/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
21
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23
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25

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'ōhe Mauka, Hāmakua,
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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