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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'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 THE
TEMPLE OF LONO'S EMERGENCY
MOTION TO BOARD TO STAY
PROCEEDINGS**, FILED APRIL 27, 2017
[DOC. 573]; DECLARATION OF
COUNSEL; EXHIBITS A-C;
CERTIFICATE OF SERVICE

**APPLICANT UNIVERSITY OF HAWAI'I AT HILO'S OPPOSITION TO
THE TEMPLE OF LONO'S EMERGENCY MOTION TO BOARD TO
STAY PROCEEDINGS, FILED APRIL 27, 2017 [DOC. NO. 573]**

Applicant UNIVERSITY OF HAWAI'I AT HILO ("**University**"), through counsel,
submits this Opposition to the Temple of Lono's ("**Temple**") *Emergency Motion to Board to
Stay Proceedings*, filed April 27, 2017 ("**Motion**") [Doc. 573].

I. INTRODUCTION

The Temple's Motion simply repeats its pending motions for reconsideration of Minute
Orders No. 43 and 44 ("**Motions for Reconsideration**") filed in the contested case hearing

before Hearing Officer Amano. The Board of Land and Natural Resources (“**Board**”) delegated the conduct of this contested case proceeding to the Hearing Officer. Minute Order No. 2 [Doc. No. 3]. The Temple implicitly recognized that authority when it filed its Motions for Reconsideration of the Hearing Officer’s rulings setting the schedule for post-hearing submissions and the admissibility of evidence. Accordingly, it is evident that this emergency motion is simply an effort to circumvent the Hearing Officer’s authority to rule on those issues and undermine the process. The Temple’s Motions for Reconsideration state essentially the same thing as the Motion and improperly seek simultaneous relief on identical issues from both the Hearing Officer and the Board directly.

II. ARGUMENT

A. THE MOTION IS PROCEDURALLY IMPROPER BECAUSE THE ISSUES RAISED IN THE MOTION ARE PENDING BEFORE THE HEARING OFFICER

The Temple’s attempt to halt the proceedings mid-stream or run to the Board every time the Temple is dissatisfied with a particular ruling of the Hearing Officer is inefficient, unnecessarily disruptive, and unfair to the parties. Such tactics are plainly an improper effort to delay this process. The Temple essentially seeks an appeal—in this case, to the Board—of the Hearing Officer’s ruling on setting post-hearing deadlines before a final decision. There is no showing that the relief the Temple seeks is not properly before the Hearing Officer for consideration. Nevertheless, the Temple must think its tactics will have some sway in either the outcome or achieve a significant delay in the process. For the Board to grant the Temple’s Motion would defeat the purpose of delegating the conduct of these proceedings to the Hearing Officer. It would also set a negative precedent that any time a party is dissatisfied with a Hearing Officer’s ruling, that party may repeatedly delay or complicate the proceedings by seeking intermediate review by the Board. And, in this case, the Hearing Officer has not even

ruled on the pending issue. Therefore, the Board should reject the Temple's improper circumvention of the Hearing Officer's properly delegated authority.

B. THE MOTION IGNORES THE PLAIN LANGUAGE OF THE RULES GIVING THE HEARING OFFICER THE AUTHORITY TO SET DEADLINES

The Motion should further be denied on the merits. The Temple's alleged "emergency" is based on the same arguments contained in its pending Motions for Reconsideration before the Hearings Officer. As briefed in the University's oppositions to those Motions for Reconsideration,¹ the Hearing Officer's authority to conduct the contested case hearing is well established in Hawai'i Administrative Rules ("HAR") §§ 13-1-38(a) and 13-1-32(c) pursuant to the Board's power under HAR § 13-1-32(b) to delegate that authority. The governing rule for the deadline to submit findings and conclusions is set forth clearly in HAR § 13-1-38(a):

After 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. A party to the proceedings may submit a proposed decision and order which shall include proposed findings of fact and conclusions of law. The proposals shall be filed with the board and mailed to each party to the proceeding ***not later than ten days after the transcript is prepared and available, unless the presiding officer shall otherwise prescribe.***

(Emphasis added). As an initial matter, the use of the word "may" in HAR § 13-1-38(a) makes clear that the rule is intended to be permissive. There is no guaranteed right for parties to submit a proposed order, findings of fact, and conclusions of law ("FOF/COL").

What HAR § 13-1-38(a) *does* require is that to the extent the parties elect to submit a proposed FOF/COL, they must do so within ten days after "the transcript is prepared and available, unless the presiding officer shall otherwise prescribe." In other words, HAR § 13-1-28(a) gives the Hearing Officer sole authority to modify the default ten-day deadline. While the

¹The University attaches and incorporates for consideration here the positions set forth in those previously filed oppositions, as Exhibits A and B.

rule requires that the parties wait until after evidence is taken to submit proposed FOF/COL, the rule imposes no such limitation on the Hearing Officer's ability to set deadlines. Rather, HAR § 13-1-32(c) gives the Hearing Officer broad authority to "fix times for submitting documents, briefs, and dispose of other matters that normally and properly arise in the course of a hearing authorized by law that are necessary for the orderly and just conduct of a hearing." Therefore, the Hearing Officer acted well within her enumerated authority by setting the May 30, 2017 deadline for submission of the proposed FOF/COL. Nonetheless, the Temple now seeks to second guess and usurp the Hearing Officer's authority and in essence directly request that the Board reverse and suspend the Hearing Officer's reasonable post-hearing schedule to second-guess the Hearing Officer's scheduling order. The Temple's position directly contradicts the plain language of HAR § 13-1-28(a) and § 13-1-32(c), and thus fails as a matter of law.

In this case, the Hearing Officer exercised her authority under HAR § 13-1-28(a) and § 13-1-32(c) to set a deadline that gives the parties 31 days *more* than the ten day default period provided for in the rules, for a total of 41 days after the parties were notified that DLNR had made the transcripts available in five different public libraries.² That is more than ample time, particularly in light of the Hearing Officer's efforts to ensure the parties had adequate time and notice to prepare their FOF/COL. Rather than acknowledge the extraordinary efforts the Hearing Office has made to accommodate the parties, the Temple instead complains—without any legal authority in support—that it and the *pro se* parties are somehow entitled to more.³

² 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.

³ In the Motion, the Temple makes numerous objections on behalf of *pro se* parties, despite the fact that the Temple is clearly not a *pro se* party. The Temple is represented by Mr. Sinkin, who

C. THE HEARING OFFICER HAS MADE NUMEROUS EFFORTS TO ACCOMMODATE THE PARTIES

As discussed in the University's opposition to the Temple's Motion for Reconsideration of Minute Order No. 43 before the Hearing Officer, among the measures that the Hearing Officer has already employed to assist the opponents in this drafting process, are:

1. The Hearing Officer posted example FOF/COL in the documents library back in October 2016 for use and guidance on the format. Ex. A at Ex. 1, Tr. 10/31/16 at 250:4-11; [Doc. Nos. 408a, 408b, and 408c].
2. The Hearing Officer's repeated reminders to the parties, beginning as early as October 31, 2016, to begin working on drafting the proposed FOF/COL. Ex. A at Ex. 1, Tr. 10/31/16 at 250:4-21. She also advised the parties to use the breaks between hearing days to draft the proposed FOF/COL. *See, e.g.*, Ex. A at Ex. 2, Tr. 11/16/16 at 11:12-11:14.
3. The Hearing Officer extended the deadline for the proposed FOF/COL three times to accommodate requests of opponents of the project.⁴
4. The DLNR has made the transcripts of the hearings available in select public libraries. Nothing in the rules require DLNR to make one copy of the transcripts—much less six—available to the parties. In every other contested case, all parties - including those not represented by counsel - must order and purchase their own copies directly from the court reporter. Indeed, Ms. Pisciotta, who is not a party but represents Mauna Kea Aina Hou ("MKAH"), acknowledged that the original six Petitioners purchased their own transcripts during the first contested case hearing. Ex. C, Tr. 12/16/16 at 234:12-14.
5. DLNR created the electronic "Documents Library" which contains the pleadings and minute orders filed in this proceeding. DLNR also made the parties' evidentiary submittals (*i.e.*, prehearing statements, written direct testimony, and exhibits) available on the website as well. Both were made available for the convenience of the parties and are not required by DLNR's administrative rules.

is an attorney (albeit, not licensed to practice before the State Courts in Hawai'i). As neither Mr. Sinkin nor the Temple represent the other parties, the Temple lacks standing to assert such objections on behalf of any other party.

⁴ The Hearing Officer first extended the deadline from the default ten days to two weeks. Ex. A at Ex. 2, Tr. 11/16/16 at 11:23-11:24. Towards the close of the hearing, she indicated she would extend the deadline again to 30 days after the transcripts became available. Ex. A at Ex. 3, Tr. 3/1/17 at 255:24-256:5. Minute Order No. 43 again extended the deadline to May 30, 2017—*i.e.*, 41 days from when the transcripts were made available.

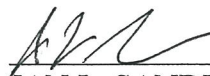
6. The Hearing Officer allowed the contested case hearings to be recorded and broadcast live by Nā Leo TV. Every day of the contested case hearing is documented in a video library at naleo.tv. The parties have admitted watching that video and certainly being able to access it as needed to make edits to any draft findings.

Put simply, there is no “emergency” warranting a stay because there is no due process violation. Due process is about the right to be heard in a meaningful way at a meaningful time. Due process does not guarantee that the hearing be conducted according to the Temple’s wishes. Nor does due process guarantee lengthy extensions to accommodate a party’s lack of diligence or simply for the sake of delay. The Temple has presented no legitimate reason as to why the Hearing Officer’s generous extension of time is insufficient, particularly in light of the Hearing Officer’s repeated accommodations of the parties and admonishments to begin drafting the proposed FOF/COL. In sum, the University asks that the Board deny the Temple’s Motion and allow the Hearing Officer to rule within the context of the existing almost-completed contested case hearing.

III. CONCLUSION

For the foregoing reasons, the Temple’s Motion should be denied.

DATED: Honolulu, Hawai‘i, May 3, 2017.



IAN L. SANDISON
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Attorneys for Applicant
UNIVERSITY OF HAWAI‘I AT HILO

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

DECLARATION OF COUNSEL;
EXHIBITS 1 TO 5

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 A** is a true and correct copy of the University's *Opposition to the Temple of Lono's Motion for Reconsideration of Minute Order 43 [Doc. 559]*, filed in the above-captioned matter on May 2, 2017.
4. Attached hereto as **Exhibit B** is a true and correct unfiled copy of the University's *Opposition to the Temple of Lono's Motion for Reconsideration of Minute Order 44 [Doc. 569]*, dated May 3, 2017 and filed in the above-captioned matter concurrently herewith.
5. Attached hereto as **Exhibit C** 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. The highlighting was added by our law firm for ease of reference.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, May 3, 2017.



IAN L. SANDISON

EXHIBIT A

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Case No. BLNR-CC-16-002

APPLICANT UNIVERSITY OF HAWAI'I
AT HILO'S **OPPOSITION TO THE
TEMPLE OF LONO'S MOTION FOR
RECONSIDERATION OF MINUTE
ORDER 43** [DOC. 559]; EXHIBITS 1-5;
DECLARATION OF COUNSEL;
CERTIFICATE OF SERVICE

**APPLICANT UNIVERSITY OF HAWAI'I AT HILO'S
OPPOSITION TO THE TEMPLE OF LONO'S MOTION FOR
RECONSIDERATION OF MINUTE ORDER 43**

Applicant UNIVERSITY OF HAWAI'I AT HILO ("**University**"), through counsel,
submits this Opposition to the Temple of Lono's ("**Temple**") *Motion for Reconsideration of
Minute Order 43* ("**Motion**") [Doc. 559].¹ The University respectfully requests that, pursuant to

¹ Hereto the University also submits this Opposition to the following: Deborah J. Ward's *Joinder to Temple of Lono Motion for Reconsideration of Minute Order 43* [Doc. 559], Mehana Kihoi's *Joinder to Temple of Lono Motion for Reconsideration for Minute Order 43* [Doc. 563], Mauna Kea Anaina Hou Et Al.'s *Joinder* [Doc. 564], Leinaala Sleightholm's *Joinder to Temple of Lono Motion for Reconsideration for Minute Order 43* [Doc. 565], Kamahana Kealoha's *Joinder 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 Motion and Joinders request that the Hearing Officer vacate Minute Order No. 43 and rule on all motions for reconsideration of Minute Order No. 44 before establishing a deadline to submit a proposed decision and order, findings of fact and conclusions of law (collectively, the "FOF/COL"); or alternatively, that parties be given ninety (90) days, rather than thirty (30) days, in which to prepare their proposed FOF/COL. In support of this request, the Temple alleges - yet again - that the Hearing Officer's ruling constitutes a violation of due process. *See* Motion at 7. For the reasons set forth below, however, the University respectfully submits that the Motion and Joinders lack legal and factual support; and should, therefore, be denied.

II. ARGUMENT

A. THE HEARING OFFICER HAS BROAD AUTHORITY TO SET DEADLINES

The Temple contends that due process has been violated because Minute Order No. 43 was issued while questions relating to the admissibility of evidence were unresolved. In support of its claim, the Temple cites HAR § 13-1-38(a), which states in pertinent part: "After 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." The Temple alleges that since all evidence has not been taken, the Hearing Officer impermissibly set a deadline for the submission of the FOF/COL. Motion at 4-5.

Contrary to the Temple's assertion that "[c]learly the purpose of HAR § 13-1-38 was to define the point in the proceeding when setting the schedule for such filings was appropriate[.]" a

Temple of Lono Motion for Reconsideration of Minute Order 43 [Doc. 567], and Clarence Kukauakahi Ching's *Joinder of Temple of Lono Motion for Reconsideration of Minute Order 43* [Doc. 572] (collectively, the "Jinders").

plain reading of the statute demonstrates that the rule was meant to govern the parties, not the presiding officer. The clause “[a]fter all evidence has been taken” modifies the subject immediately following it—*i.e.*, “the parties.” Plainly, the reference to “the presiding officer” is only meant to qualify “the time set[,]” not subject the presiding officer to the condition of waiting until all the evidence has been received before setting a time by which the FOF/COL must be filed.² In other words, HAR § 13-1-38(a) dictates when the *parties* may submit a proposed decision: “[a]fter all evidence has been taken,” and “within the time set by the presiding officer.” HAR § 13-1-38(a) imposes no limitation on when the presiding officer may set that time. The Temple’s mischaracterization of the rule distorts the plain language and would render it meaningless. Moreover, the Temple’s interpretation runs afoul of HAR § 13-1-32(c), which grants unfettered authority to the presiding officer to, *inter alia*, “fix times for submitting documents, briefs, and dispose of other matters that normally and properly arise in the course of the hearing . . .” without any conditions on when such times may be set. Where the statutory language is plain and unambiguous, a court’s “sole duty is to give effect to its plain and obvious meaning.” *Citizens Against Reckless Dev. v. Zoning Bd. of Appeals of City & County of Honolulu*, 114 Hawai‘i 184, 193, 159 P.3d 143, 152 (2007). If no ambiguity exists, then the plain meaning of the text is conclusive and the inquiry generally comes to an end. *See Lawrence v. City of Philadelphia, Pa.*, 527 F.3d 299, 316–17 (3d Cir. 2008). Therefore, HAR § 13-1-38(a) does not provide any support for the Motion.

B. UNTIMELY MOTIONS ARE INSUFFICIENT BASIS FOR FURTHER DELAY

The Temple argues that due process is being violated because substantive motions are

² Moreover, as the contested case proceeding has concluded and no new evidence is being admitted, all evidence in his case has been presented - motions for reconsideration notwithstanding.

still pending. According to the Temple, “[its] participation in this proceeding is replete with instances where the Temple filed a motion and the Hearing Officer simply ignored the motion.... The failure of the Hearing Officer to rule on those pending motions means that the record is incomplete.” Motion at 3. Aside from the record clearly demonstrating that the Hearing Officer has heard and issued rulings for several motions filed by the Temple,³ the Temple ignores that all the pleadings in the Temple’s *Motion to Schedule Unscheduled Motions* [Doc. 324] were filed well past the deadline for pre-hearing motions and were therefore untimely. The Hearing Officer was under no obligation to review the merits of the Temple’s prehearing motions that were filed without leave and well beyond the established deadline. *See generally* 60 C.J.S. Motions and Orders § 9 (noting that unauthorized motions are inoperative for any purpose). Thus, the Hearing Officer’s proper exercise of discretion to decline to consider untimely motions is not an adequate basis to support reconsideration.

C. THE HEARING OFFICER’S DEADLINES ARE MORE THAN REASONABLE

The Temple argues that due process is violated because the established deadlines contained in Minute Order No. 43 are unduly restrictive. The Temple complains that as “[t]he hearing in this proceeding took 44 days” in which “[s]eventy one witnesses testified[,]” the deadlines do not “reflect the reality of this proceeding.” Motion at 7. Again, rather than cite to facts or case law, the Temple proffers mischaracterization in support of its argument. The record clearly shows that the Hearing Officer did, in fact, take into account “the reality of this

³ The Hearing Officer did entertain argument and issue rulings on the Temple’s motions that were filed by, and even after, the July 18, 2016 deadline for prehearing motions. *See* Minute Order No. 23 [Doc. 346] (denying the Temple’s Motion for Partial Summary Judgment filed June 21, 2016); Minute Order No. 29 [Doc. 352] (denying the Temple’s Motion to Dismiss for Lack of Jurisdiction, filed July 22, 2016); Minute Order No. 17 (denying the Temple’s Motion to Vacate Ruling and Supplement Response Time, filed July 22, 2016); Minute Order No. 33 [Doc. 356] (denying the Temple’s Motion to File Motion Out of Time, filed Aug. 8, 2016).

proceeding.”

Specifically noting the length of the proceeding, the Hearing Officer generously afforded the parties more than triple the statutorily-provided 10 days by which to submit their FOF/COL. The governing rule for the deadline to submit findings and conclusions is set forth clearly in HAR § 13-1-38(a).⁴ The rule provides for FOF/COL to be submitted “not later than ten days after the transcript is prepared and available, unless the presiding officer shall otherwise prescribe.” *Id.* Nonetheless, on numerous occasions, the Hearing Officer stated that while the rules only provide for ten days by default, she intended to establish a two-week deadline. *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].”). This deadline was subsequently further extended to accommodate the requests of opponents of the project and in consideration of the length of the proceeding. *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.”). Ultimately, Minute Order No. 43 set a deadline that gives the parties 31 days *more* the ten day default period provided for in the rules, for a total of **41 days** after the parties were notified that DLNR had made the transcripts available in five different public libraries.⁵

⁴ As a preliminary matter, the University notes that the language of HAR § 13-1-38(a) is *permissive*, in that it merely provides that “the parties *may* submit . . . proposed findings of fact and conclusions of law.” Emphasis added. As such, there is no due process right to submit findings of fact, conclusions of law.

⁵ 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

Additionally, in order to assist in this drafting process, the parties have been granted access to multiple resources. Most significantly, the parties have been granted *free* access to full transcripts of the proceeding at multiple locations. As set forth in HAR § 13-1-32(d), in the event a party desires copies of hearing transcripts, such party “may obtain a certified transcript of the proceedings upon *payment* of the fee established by law for a copy of the transcript.” Emphasis added. That the parties have the benefit of full transcripts free of charge is an extraordinary accommodation. Moreover, at the suggestion of the Office of Conservation and Coastal Lands, the Hearing Officer also arranged for samples of FOF/COL to be available nearly five months before the close of the hearing to assist the parties—particularly those who are *pro se*. See 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....”). These resources are in addition to the Documents Library, which enables the parties to electronically access all the pleadings filed in this contested case, as well as the video archive on the naleo.tv website, which contains full recordings of every day of this contested case. As the record demonstrates, the Hearing Officer expended extensive effort to accommodate the parties. Given the drastically extended deadline and multiple resources available, the Temple’s allegation of lack of due process unfounded.

Moreover, the Hearing Officer made repeated reminders to the parties that they should begin working on their draft 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.

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.

12/13/16 at 218:4-218:7 (“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[.]”). The Hearing Officer specifically warned the parties against waiting until the transcripts were available to begin drafting their respective FOF/COL. *See* Ex. 3, Tr. 3/1/17 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.”). In sum, for the Temple to now accuse the Hearing Officer of being unreasonable and restrictive in setting the deadlines, despite her countless attempts to accommodate the parties, shows that the Temple’s arguments are nothing more than a thinly veiled effort to try to create a procedural issue where there is none.

D. THE HEARING OFFICER TOOK INTO ACCOUNT THE PETITIONERS’ PRO SE STATUS

Throughout the Motion, the Temple makes much of the fact that many parties have represented themselves *pro se* during this proceeding. *Id.* (“That most of the Protector Intervenors are *pro se* parties only compounds the injustice in the Hearing Officer’s forced march to completion.”). As an initial matter, the Temple is not *pro se* and is represented by Mr. Sinkin, who is an attorney (albeit, not licensed to practice before the State Courts in Hawai‘i). Neither Mr. Sinkin nor the Temple represent the other parties; the Temple, thus, lacks standing to assert such objections on behalf of any other party.

Even if the Temple could assert the rights of *pro se* parties that it does not represent, the

record is clear that the Hearing Officer was mindful of the *pro se* status of the intervenors at every turn and made every reasonable effort to accommodate them. As discussed previously, the Hearing Officer established a system in which all the filed documents are available online, provided samples of FOF/COL as early as October 31, 2016, ensured access to complete transcripts of the proceedings free of charge, and tripled the time to prepare the FOF/COL — none of which are required by law or the administrative rules. The Hearing Officer has been abundantly conscientious of the *pro se* status of many of the parties and has endeavored to ensure the full and fair participation of all parties in this proceeding. The Motion and Joinders seemingly misunderstand the requirements of due process,⁶ and despite their efforts to assert arguments to the contrary, are unable to establish grounds for the relief requested.

E. LACK OF DILIGENCE BY THE TEMPLE IS INADEQUATE JUSTIFICATION FOR AN EXTENSION

The Temple's Motion offers no explanation as to how the *pro se* status of the other intervenors is justification for why the Temple, which is represented by Mr. Sinkin, an attorney, cannot meet the deadlines set by the Hearing Officer. The Temple cannot hide behind other parties it does not represent to excuse its own lack of diligence in preparing its FOF/COL.⁷

⁶ Due process is about the right to be heard in a meaningful way at a meaningful time. See *Sandy Beach Defense Fund v. City Council of the City and County of Honolulu*, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989) (holding that the basic elements of procedural due process of law require notice and an opportunity to be hearing at a meaningful time and in a meaningful manner). It is not about extending deadlines for the purpose of delay, which plainly is the Temple's real agenda as it presents no legitimate excuse for not being advised to start the process of drafting and certainly cannot demonstrate why 30 days before the deadline even expires it needs a further extension given the above admonitions to begin drafts early on.

⁷ To the extent the Temple is advocating on its own behalf that it lacks sufficient time to address the University's objections to its exhibits and prepare FOF/COL, the University notes that the Temple filed the *Temple of Lono Joinder to Mauna Kea Anaina Hou Motion Requesting Time to Respond to Exhibit Objections and Related Matters* [Doc. 526] on March 22, 2017, approximately a month before Minute Order No. 44 was issued. During that month, the Temple failed to file any objections, responses, or memoranda regarding its exhibits. Thus, the Temple's

Moreover, as discussed in detail above, the Hearing Officer made it abundantly clear as early as October 31, 2016 that the parties should have been working on their FOF/COL well in advance of the close of the hearing. *See* Ex. 1, Tr. 10/31/16 at 249:22-252:4. In other words, as of the May 30, 2017 deadline, the parties will have had *six months* since the Hearing Officer first put them on notice to work on their submissions; and they will have had 89 days (nearly three months) since the close of the evidentiary hearing on March 2, 2017 to do the same. There is no excuse not to have started the effort and use the transcripts and final exhibits only for final citation reference. The Temple's complaint that the parties do not have enough time to draft a proposed decision and order, findings of fact and conclusions of law is truly a problem of their own making and does not constitute a sufficient basis for reconsideration of Minute Order No. 43.

III. CONCLUSION

For these reasons, the University respectfully asks that the Motion be denied.

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



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Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

purported inability to address the University's objections and draft findings of fact, conclusions of law is solely the result of the Temple's own dilatoriness.

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

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. 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

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

13:04:02 1

BOARD OF LAND AND NATURAL RESOURCES

2

STATE OF HAWAII

3

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

4

Contested Case Hearing Re)

13:04:02 5

Conservation District Use)

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Application (CDA) HA-3568)

7

For the Thirty Meter)

8

Telescope at the Mauna Kea)

Science Reserve, Ka'ohe)

Mauka, Hamakua, Hawaii.)

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.

16

17

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19

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

13:04:02 20

21

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24

25

ISLAND COURT REPORTING & TRANSCRIPTION SERVICES
 1132 Bishop Street, Ste. 2101 Tel: 808.518.7522

Exhibit 2

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

)

4

) SS.

COUNTY OF HONOLULU

)

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

the machine shorthand and was thereafter reduced to

11

typewriting under my supervision; that the foregoing

12

represents, to the best of my ability, a true and

13

correct copy of the proceedings had in the foregoing

14

matter.

16:23:24 15

16

I further certify that I am not of counsel

17

for any of the parties hereto, nor in any way interested

18

in the outcome of the cause named in this caption.

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

23

24

25

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

McMANUS COURT REPORTERS (808) 239-6148

Exhibit 3

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. PISCIOтта: 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. PISCIOтта: Two weeks.

18 HEARINGS OFFICER AMANO: Yes.

19 MS. PISCIOтта: 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. PISCIOTTA: 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. PISCIOTTA: 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

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 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

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on December 13, 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 13th day of December, 2016, in Honolulu, Hawaii.

/S/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #157

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 Nanihoa Hotel, Crown Room, 93 Banyan Drive,
 Hilo, Hawaii 96720.

BEFORE: Jean Marie McManus, CSR #156

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15 HEARINGS OFFICER AMANO: Your e-mail, your
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COUNTY OF HONOLULU)

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

/S/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #157

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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that the above-referenced document was served upon the
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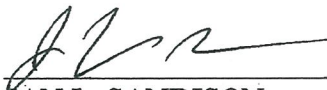
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DATED: Honolulu, Hawai'i, May 2, 2017.



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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

UNIVERSITY OF HAWAI'I AT HILO'S
**OPPOSITION TO THE TEMPLE OF
LONO'S MOTION FOR
RECONSIDERATION OF MINUTE
ORDER 44; DECLARATION OF
COUNSEL, EXHIBITS 1 TO 5;
CERTIFICATE OF SERVICE**

**UNIVERSITY OF HAWAI'I AT HILO'S OPPOSITION TO THE TEMPLE OF LONO'S
MOTION FOR RECONSIDERATION OF MINUTE ORDER 44**

Applicant UNIVERSITY OF HAWAII AT HILO ("**University**"), through counsel,
submits its Opposition to the Temple of Lono's ("**Temple**") Motion for Reconsideration of
Minute Order 44 [Doc. 569] ("**Motion**").¹ The University respectfully requests that, pursuant to

¹ Hereto the University also submits this Opposition to the following:

- A) Harry Fergerstrom's Motion to Temple of Lono's Motion to Reconsider Minute Order
44 [Doc. 570];

the authority delegated to the Hearing Officer under Hawai‘i Revised Statutes (“HRS”) § 91-10 and Hawai‘i Administrative Rules (“HAR”) §§ 13-1-32 and 35, the Hearing Officer deny the Motion.

I. INTRODUCTION

Following the close of hearings on March 2, 2017, the Hearing Officer gave careful consideration to the parties’ motions to admit exhibits and the objections thereto in order to produce a comprehensive and detailed ruling regarding the admission of exhibits—*i.e.*, Minute Order No. 44. Despite this fact, the Temple now argues that the Hearing Officer’s order is flawed because it unfairly prejudices the Temple, denies the Temple of its due process rights, and therefore demonstrates the Hearing Officer’s bias against the Temple. The Temple ignores the fact that the exhibits excluded by the Hearing Officer are: 1) plainly irrelevant; 2) comprised of legal argument that should not be considered evidence; and/or 3) in the nature of rebuttal or direct testimony for which the proponent was not available for cross examination. Instead, the Temple focuses its well-worn rhetoric premised on baseless allegations of bias, unfairness, and due process rights, which have no bearing on the admissibility of evidence. Accordingly, the Hearing Officer should deny the Motion.

B) J Leina’ala Sleightholm’s Joinder to the Temple of Lono’s Motion to Reconsider MO 44 [Doc. 576]; and

C) Clarence Kukauakahi Ching’s Joinder of 1) Temple of Lono Motion for Reconsideration of Minute Order 44 and Memorandum in Support, 2) Flores-Case ‘Ohana’s Motion to Reconsider Minute Order No. 44 and Notice of Spoliation of Evidence, and Memorandum in Support Dated April 26, 2017, and 3) Mauna Kea Anaina Hou et al. Joinder to the Temple of Lono Motion for Reconsideration of Minute Order 44 and Objections Dated April 27, 2017, Certificate of Service, filed April 28, 2017 [Doc. 587] (“**Ching Joinder**”), to the extent that the Ching Joinder addresses arguments made in the Motion.

II. ARGUMENT

A. MINUTE ORDER NO. 44 IS CONSISTENT WITH THE HEARING OFFICER'S AUTHORITY UNDER THE APPLICABLE STATUTE AND ADMINISTRATIVE RULE

Under HRS § 91-10(1) and HAR § 13-1-35(a), the Hearing Officer may receive any oral or documentary evidence, but exclude evidence that is irrelevant, immaterial, or unduly repetitious.² Exercising this authority, the Hearing Officer issued Minute Order No. 44, admitting the majority of proposed written testimony and exhibits into evidence, and denying admission of those items that are irrelevant, immaterial, or unduly repetitious. The Hearing Officer also excluded evidence submitted in an untimely manner, evidence consisting of legal argument, and evidence constituting of rebuttal or direct testimony not subject to cross-examination. Such rulings were well within the authority granted to the Hearing Officer under HRS § 91-10(1) and HAR § 13-1-35(a).

B. THE TEMPLE'S ARGUMENTS LACK MERIT

The Temple argues that the Hearing Officer erroneously excluded many of its exhibits, primarily citing issues related to bias, unfairness, and due process. These are familiar themes in

² HRS § 91-10(1) governs the rules of evidence for contested cases, and provides that:

Except as provided in section 91-8.5, any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence.

HAR § 13-1-35(a) governs the Hearing Officer's authority in contested case proceedings, and provides that:

The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view of doing substantial justice.

the Temple's filings, and, as demonstrated below, are characteristically misguided and unavailing here.

1. The Issue of Bias is Irrelevant to the Admissibility of Evidence

The Temple's main argument is that the Hearing Officer should reconsider Minute Order No. 44 because the terms of the order itself demonstrate the Hearing Officer's bias against the "Protector Intervenors."³ This argument fails for several reasons.

First, the issue of bias is irrelevant to the admissibility of evidence, and is equally irrelevant to a motion for reconsideration of a ruling on evidentiary issues. Hearing Officer bias is an issue that should be raised exclusively through a motion for disqualification or recusal.

Second, Minute Order No. 44 does not establish bias on the part of the Hearing Officer. Under HAR § 13-1-32(c), the Hearing Officer has the authority to control the proceeding and set deadlines necessary for the orderly and just conduct of a hearing. The Hearing Officer's exercise of such discretion to set uniform deadlines cannot be evidence of bias.

Finally, the Temple's argument is plainly illogical, as it request that the Hearings Officer reverse her own ruling based on her own bias. If the Hearing Officer believes that her bias affected any ruling, the proper remedy would be recusal, not reconsideration of such ruling.

2. The Procedure Does not Violate Due Process Rights

The Temple argues that the Hearing Officer violated its due process rights by conducting a "bait and switch" that led the Temple to believe that its exhibits would automatically be admitted into evidence. The University notes that the Temple failed to provide any citation as to where in the record the Hearing Officer stated an intent to "take in all the proffered exhibits with very few exceptions" or to grant all motions to admit evidence. Moreover, although it was

³ Defined as all parties except for the University, TMT International Observatory, LLC, and Perpetuating Unique Educational Opportunities, Inc.

understood that the Hearing Officer would apply a relaxed approach to the authentication and admission of evidence, at no time was it specifically stated that all evidence would be admitted. The Hearing Officer made it clear that exhibits can be challenged and excluded, despite this relaxed approach. *See, e.g.*, Ex. 1, Tr. 11/16/16 at 181:15-17 (“Every single exhibit that is out there that everybody expects will be coming in or not, can be challenged”). This understanding is evidenced by the countless evidentiary objections made by the parties throughout the proceeding. *See, e.g.*, Ex. 2, Tr. 1/5/17 at 26:6-27:6 (Kealoha Pisciotto objecting to the testimony of Heather Kaluna as irrelevant); Ex. 3, Tr. 3/1/17 at 83:23-84:14 (Joseph Camara objecting to cross-examination questions regarding Exhibit A-154); *Id.* at 93:14-22 (Dexter Kaiama arguing that the University’s proposed exhibit be excluded); Ex. 4, Tr. 2/28/17 at 273:9-16 (Yuklin Aluli objecting to the University’s proposed exhibit). Additionally, the Hearing Officer consistently required the parties—including the Temple—to lay foundation for exhibits before they could be used during direct and cross-examination of witnesses. *See, e.g.*, Ex. 2, Tr. 1/5/17 at 176:5-179:24 (requiring the Temple to lay foundation regarding proposed Exhibits L-24 and L-25). Furthermore, the Hearing Officer set a clear schedule for the parties to file motions to admit exhibits and to submit responses and objections thereto. If the Hearing Officer intended on simply admit all exhibits into evidence, there would be no purpose in allowing objections to exhibits or requiring foundation be laid. Accordingly, the parties understood all along that exhibits would not be automatically admitted into evidence. As such, there was no “bait and switch” conducted by the Hearing Officer, and the process employed regarding the admission of exhibits did not violate the due process rights of any party.

3. The Temple Had Adequate Time to File Responses to the University’s Objections to Admission of Evidence

The Temple argues that it did not have adequate time or opportunity to respond to the

University's Opposition to Motions to Admit Exhibits and Written Direct Testimony [Doc. 514] (the "**University's Objections**"). However, the record indicates that the Temple had more than a month to respond to the University's Objections, but failed to act. The University's Objections were filed on March 16, 2017, and on March 22, 2017, the Temple filed its Joinder to Mauna Kea Anaina Hou[']s Motion Requesting Time to Respond to Exhibit Objections and Related Matters [Doc. 526]. Thereafter, the Temple did nothing for a month until the Hearing Officer issued Minute Order No. 44. During this time, the Temple had adequate opportunity to file responses to the University's Objections (with an accompanying motion for leave to file), but failed to do so. The Temple cannot now argue that it lacked opportunity to respond when it made no effort to do so within the available time frame.

4. The Process Did Not Unfairly Favor Any Party

The Temple argues that the process for admission of evidence unfairly favored the University and TMT International Observatory, LLC ("**TIO**"). This argument is based on the fact that the Hearing Officer admitted the majority of the University's and TIO's exhibits while excluding many of those offered by the Protector Intervenors. This statement ignores reality. The Hearing Officer received the overwhelming majority of the proffered testimony and exhibits into the record, and received numerous exhibits into evidence over the objections of TIO and the University. In total, of the more than 750 pieces of written testimony and exhibits moved into evidence by all the parties, the Hearing Officer admitted 616. The Temple's unfounded allegation that the Hearing Officer favored certain parties over others is nothing more than a reckless attempt to undermine these proceedings and is clearly contradicted by the language of Minute Order No. 44.

5. The Specific Rulings Regarding the Temple's Exhibits Were Proper

In addition to the general arguments discussed above, the Temple also made arguments

that the Hearing Officer's specific rulings regarding its exhibits were improper. As discussed below, these arguments are unpersuasive.

a. Prehearing Statement

The Hearing Officer properly excluded the Temple's Prehearing Statement as it contained legal argument. As the Temple's counsel, Mr. Sinkin, is well aware, legal argument is not evidence. *See Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291, 1312 (9th Cir. 2003) ("Argument is not evidence"); *Alleva v. New York City Dept. of Investigation*, 696 F.Supp.2d 273, 278 (E.D.N.Y. 2010) ("legal argument is not evidence"). The Temple points to no ruling by the Hearing Officer that suggests otherwise. The Temple improperly attempted to present the legal arguments in its Prehearing Statement as evidence, and therefore, the statement was properly excluded as evidence.⁴

b. Exhibit L-1 (Rubellite Kawena Johnson Declaration)

The Hearing Officer properly excluded Exhibit L-1 because it constitutes a hearsay declaration that should not be admitted into evidence. Although the Hearing Officer did not enforce the hearsay rule when an oral hearsay statement was made by a witness subject to cross-examination, Exhibit L-1 does not fall within this category because it is a written hearsay declaration of Ms. Rubellite Kawena Johnson, who did not appear as a witness at the hearing and was not subject to cross examination on the contents of her declaration. Accordingly, Exhibit L-1 was properly excluded, even considering the relaxed standards regarding hearsay.

c. Exhibit L-3 (Kahuna Nobriga Article)

The Hearing Officer excluded Exhibit L-3 as immaterial and irrelevant. The Temple

⁴ The University also notes that Minute Order No. 44 denied admission of all prehearing statements, except where the movant did not submit written direct testimony, but instead, incorporated its written direct testimony into its prehearing statement. The Temple submitted written direct testimony, and therefore, does not fall into this exception.

argues that the exhibit is relevant as to whether the traditional Hawaiian faith still exists. Mot. at 16. Assuming that were true, the existence of the traditional Hawaiian faith is not at issue here. Additionally, Exhibit L-3 is an account of efforts to restore the Island of Kaho‘olawe and has nothing to do with Mauna Kea or the Thirty-Meter Telescope Project. Accordingly, Exhibit L-3 is irrelevant and immaterial and thus, was properly excluded.

d. The Temple’s Pleadings and Previous Minute Orders

The Hearing Officer excluded Exhibits L-4, L-5, L-6, L-8, and L-9, each of which are pleadings filed by the Temple in this contested case proceeding. These exhibits were properly excluded because each is comprised of legal arguments, not evidence. Similarly, the Hearing Officer properly excluded Exhibit L-7, the Hearing Officer’s Minute Order No. 19, which set forth the issues to be addressed in this proceeding and does not constitute evidence.

Moreover, these exhibits are irrelevant to the issues at hand. The Temple assert that these exhibits are necessary to support its accusations of mistreatment by the University, as well as bias on the part of the Hearing Officer. Mot. at 16-22. The Hearing Officer has repeatedly rejected the Temple’s attempts to inject its conspiracy theories into these proceedings. *See, e.g.*, Minute Order No. 33 [Doc. 356] (denying the Temple’s Motion to Dismiss Out of Time, which incorporated allegations of bigotry and libel against the University); Minute Order No. 23 [Doc. 346] (denying the Temple’s Motion for Partial Summary Judgment, where the Temple asserted claims of bigotry against the University in its reply memorandum); Minute Order No. 39 [Doc. 406] (denying Renewed Motions to Disqualify Hearing Officer to which the Temple joined and argued bias based on the fact that the Hearing Officer sanctioned acts of bigotry and libel by the University). Therefore, exhibits relating to already excluded issues are plainly irrelevant to the merits of the Conservation District Use Application (“**CDUA**”).

e. Exhibits L-10 and L-12

The Hearing Officer excluded Exhibit L-10 as irrelevant and immaterial. The Temple argues that the exhibit is relevant to Kahuna Nobriga's testimony. The standard for relevance of a document is not whether an exhibit is relevant to someone's testimony, but rather, whether it is relevant to the issues subject to the proceeding. Here, Exhibit L-10 is a **fictional** document drafted by Mr. Sinkin, which describes a completely fabricated "Imperial Guide to the Conquest of Hawai'i" and is plainly irrelevant to the merits of the CDUA. Additionally, this exhibit is a product of Mr. Sinkin's imagination, and has no basis in fact or logic.

The Hearing Officer also excluded Exhibit L-10 because it was authored by Mr. Sinkin, who did not testify and was not subject to cross-examination on the exhibit. Similarly, the Hearing Officer excluded Exhibit L-10, as well as Exhibit L-12, because the exhibits are essentially the direct testimony of Mr. Sinkin and Samuel Lono, respectively, both of whom did not testify and were not subject to cross-examination on the exhibit. The Hearing Officer made clear that written direct testimony of witnesses who were not available for cross-examination would be stricken. *See, e.g.,* Ex. 5, Tr. 12/8/16 at 18:15-19:12. Given that Mr. Sinkin was present for the hearing, he had ample opportunity to submit his testimony and make himself available for cross-examination. Having declined to do so, he cannot now complain that the Hearing Officer declined to receive his testimony into evidence.

f. Exhibit L-13

The Hearing Officer excluded Exhibit L-13 as irrelevant, immaterial, and due to the fact it consists of legal argument, not evidence. The Temple argues that Exhibit L-13 is relevant as to the continued existence of the Temple. Again, the existence of the Temple is not at issue here. Even if it were relevant to the issues in this proceeding, Exhibit L-13 contains legal argument, which, again, is not evidence.

g. Exhibit L-14

The Hearing Officer excluded Exhibit L-14 as irrelevant, immaterial, and due to the fact it consists of legal argument, not evidence. The Temple argues that Exhibit L-14 is relevant as to the University's character. Character is not one of the criteria by which CDUAs are evaluated, nor is it one of the issues set forth in Minute Order No. 19, and therefore, is irrelevant here. And again, even if it were relevant, Exhibit L-14 contains legal argument, not evidence.

h. Exhibit L-24

The University notes that the Temple's argument regarding Exhibit L-24 is ambiguous. The Hearing Officer admitted Exhibit L-24 over the University's objection, and it is unclear what relief the Temple is requesting.

III. CONCLUSION

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

DATED: Honolulu, Hawai'i, May 3, 2017.



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JOHN P. MANAUT
LINDSAY N. MCANEELEY

Attorneys for Applicant
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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

DECLARATION OF COUNSEL;
EXHIBITS 1 TO 5

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 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.
4. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the transcript prepared by Jean Marie McManus of the evidentiary hearing held on January 5, 2017 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 Laura Savo of the evidentiary hearing held on February 28, 2017 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 8, 2016 in the above-captioned matter, presided over by Judge Riki May Amano.

8. 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 3, 2017.



IAN L. SANDISON

EXHIBIT 1

13:04:02 1

BOARD OF LAND AND NATURAL RESOURCES

2

STATE OF HAWAII

3

IN THE MATTER OF

) CASE NO. BLNR-CC-16-002

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Contested Case Hearing Re

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13:04:02 5

Conservation District Use

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Application (CDUA) HA-3568

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For the Thirty Meter

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Telescope at the Mauna Kea

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Science Reserve, Ka'ohe

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Mauka, Hamakua, Hawaii

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VOLUME 9

8

TMK (3)4-4-015:009

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13:04:02 10

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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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14:57:41 1 we'll deal with it at the time.

2 MR. FLORES: So I guess at that time, can I
3 challenge certain exhibits as well as this direct
4 testimony at that particular time?

14:57:50 5 HEARINGS OFFICER AMANO: You wouldn't
6 challenge the written testimony, it would already be in
7 because he's been cross-examined on his written
8 testimony.

9 And so if you want to argue that it should not
14:58:01 10 be given any weight at all, that you can do in your
11 argument.

12 MR. FLORES: Okay. And then to clarify but we
13 can challenge the exhibits that are being proposed to be
14 put into evidence.

14:58:13 15 HEARINGS OFFICER AMANO: Every single exhibit
16 that is out there that everybody expects will be coming
17 in or not, can be challenged.

18 MR. FLORES: So wouldn't we also have the
19 opportunity to challenge the written direct testimony
14:58:26 20 that is being proposed to be put into evidence as well?

21 HEARINGS OFFICER AMANO: Not once the witness
22 testifies because we're all relying on the written
23 testimony, and that is why you folks are all doing
24 cross-examination.

14:58:38 25 So the way you would challenge it is you would

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

That on November 16, 2016, 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.

DATED: December 21, 2016

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

EXHIBIT 2

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 22
Telescope at the Mauna Kea)
Science Reserve, Ka'ohe)
Mauka, Hamakua, Hawai'i)
TMK (3)4-4-015:009)
_____)

CONTESTED CASE HEARING

Held on January 5, 2017, 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 Q Do you believe -- well, any of your
2 practices be impacted by the construction of the
3 Thirty Meter Telescope?

4 A No.

5 Q Okay.

6 MS. PISCIOTTA: I want to state for the
7 record, it's not about you -- that I think it's
8 outside the scope of this contested case hearing, her
9 testimony. Because astronomy is not an issue in this
10 case, the merits of astronomy are not at issue in
11 this case.

12 If we were -- if the TMT were attempting to
13 build a hospital, using the same methodologies with
14 the same threats to the environment or to the
15 cultural practices, we would object but we wouldn't
16 mean we were against health care.

17 So I believe this witness's testimony is
18 outside the scope of our hearing. There's nothing in
19 the eight criteria that says that the merits of
20 astronomy could somehow override the eight criteria.
21 And then there's nowhere in state law or
22 constitutional law that protects astronomy. It does,
23 however, protect Native Hawaiian rights and religious
24 rights.

25 So I'd like to mark for the record that I

1 don't have any further questions. I would love to
2 talk to you separately outside of this about your
3 astronomy, but that's what I want to state for the
4 record that I object to not her, but her as a witness
5 here in this contested case hearing and I don't have
6 any further questions. Mahalo.

7 HEARINGS OFFICER AMANO: Thank you.

8 Mr. Shinyama, would you like to respond?

9 MR. SHINYAMA: Yeah, Your Honor. We would
10 object to Ms. Pisciotta's argument regarding the
11 relevance of Dr. Kaluna's testimony. Dr. Kaluna's
12 testimony is clearly a relevant part of the
13 administrative rules and eight criteria before this
14 board is to consider public health and welfare as
15 well as community benefits. And also as Dr. Kaluna
16 has just testified to, she considers astronomy as
17 part of her practices on the mauna and which under Ka
18 Pa'akai this court and this board is required to take
19 inventory of so it's clearly relevant, Your Honor.

20 HEARINGS OFFICER AMANO: Thank you.

21 Ms. Pisciotta.

22 MS. PISCIOTTA: Yeah, when I asked the
23 question about traditional and customary practices,
24 traditional customary practices are well defined.
25 They were well-defined in the Supreme Court decision

1 that brought us back here, and modern astronomy is
2 not within that scope.

3 Traditional astronomy is within that scope.
4 We have many witnesses who will come up and talk
5 about how their traditional star lore, star knowledge
6 and quote/unquote astronomy will be affected.

7 But I'm sorry she's not testifying to that,
8 and so I would refute what he's saying here. The
9 rules don't require protecting modern astronomy and
10 modern telescopes, but the constitution unequivocally
11 protects traditional and customary practice and that
12 is defined in the law and in the case that sent us
13 here. That's why I believe it's outside the scope.
14 Thank you.

15 HEARINGS OFFICER AMANO: Thank you.

16 Mr. Ching.

17 CROSS-EXAMINATION

18 BY MR. CHING:

19 Q Good morning, Dr. Kaluna.

20 A Aloha.

21 Q I'm called Ku Ching or Uncle Ku Ching, glad
22 to meet you.

23 A Nice to meet you, too.

24 Q In your oral testimony, you talk about your
25 father and your parents. Would you have any other

1 telescope is an entire industry that produces
2 \$88 million worth of income in Hawaii would help to
3 offset uncertainties in an industry that produces
4 \$14.7 billion?

5 MR. SHINYAMA: Objection, Your Honor, lack
6 of foundation. He's already testified he's unaware
7 of the tourism number.

8 HEARINGS OFFICER AMANO: Mr. Sinkin.

9 MR. SINKIN: I have a document, Your Honor.
10 This is the Hawaii tourism authority immediate
11 release January 29, 2015, titled, a record
12 8.3 million visitors came to Hawaii in 2014. Total
13 visitor expenditures grew to 14.7 billion.

14 MR. SHINYAMA: Do you have an exhibit
15 number for this?

16 MR. SINKIN: No.

17 MR. SHINYAMA: Are you going to?

18 HEARINGS OFFICER AMANO: Will you mark
19 that, if you don't mind, next in order for your own
20 exhibit.

21 MR. SINKIN: I can do that.

22 HEARINGS OFFICER AMANO: Just so that we
23 have a record of it.

24 MR. SINKIN: Okay.

25 MR. SHINYAMA: Can I also get a copy,

1 please?

2 Q (By Mr. Sinkin): So do you see now that
3 the Hawaii Tourist Authority says that the estimated
4 income is -- I'll have you double check. What does
5 it say in the headline of that release?

6 A Yes, but can I make a comment?

7 Q Have at it.

8 A This talks about 8.3 million visitors came
9 to Hawaii and grew to the -- the visitor expenditure
10 14.7 billion.

11 Q Billion.

12 A So I would ask the Hawaii Tourism Authority
13 how much of that money stayed in Hawaii.

14 Q I understand you have a --

15 A Then you can compare our measly 800 million
16 to this number.

17 Q I believe it's 88 million, whatever.

18 A I don't even know the numbers for that.

19 Q Okay. I'll do the second exhibit.

20 A But then you can compare the two.

21 Q Right.

22 So I'll give the second exhibit Astronomy
23 Economic Research Organization at the University of
24 Hawaii. It's titled The Economic Impact of Astronomy
25 in Hawaii, and it's dated August 28, 2014, and we'll

1 talk about it?

2 HEARINGS OFFICER AMANO: Mr. Sinkin, may I
3 hand this to Mr. Cain so that he can upload it for
4 you?

5 Just mark it next in order.

6 Q (By Mr. Sinkin): Turning to page three of
7 that exhibit in the second paragraph, the second
8 sentence begins, total astronomy related spending.
9 Do you see that?

10 MR. SHINYAMA: Your Honor, before we
11 proceed, I would like foundation laid that
12 Dr. Coleman has never seen this particular report, or
13 is this one that you were referring to earlier?

14 MR. SINKIN: This is one we talked about
15 earlier.

16 HEARINGS OFFICER AMANO: I think he's
17 laying foundation now.

18 MR. SINKIN: Yes, absolutely.

19 HEARINGS OFFICER AMANO: Go ahead.

20 Q (By Mr. Sinkin): You see that sentence?
21 On the second paragraph, second sentence, total
22 astronomy related spending. The paragraph begins
23 local astronomy, the second paragraph. If you just
24 drop down to the second line.

25 A I got it.

1 Q There you go. Could you read that
2 sentence, please?

3 A "Total astronomy related spending in the
4 state was 88.09 million".

5 Q And going to the first page of this
6 document, you can confirm that that's published in
7 August 28, 2014?

8 A Yes.

9 Q Okay. Did I hear yes?

10 A Yes, sorry.

11 Q And would you have any idea how much of
12 that \$88 million remained in Hawaiian and didn't go
13 out to astronomical facilities operated by foreign
14 countries or foreign entities?

15 A Probably zero went to foreign entity
16 telescope in astronomy groups. They pour their money
17 into the state not we pay them.

18 Q Don't we have examples of people who have
19 paid them to use the telescopes?

20 A No, doesn't work that way.

21 Q Thank you.

22 That's all I have, Your Honor.

23 HEARINGS OFFICER AMANO: Thank you, Mr.

24 Sinkin.

25 Mr. Vicente.

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

5 I, JEAN MARIE McMANUS, do hereby certify:

6 That on January 5, 2017, at 9:00 a.m., the
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
10 represents, to the best of my ability, a true and
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 5th day of January, 2017, in
17 Honolulu, Hawaii.

18
19 /S/Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
21
22
23
24
25

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

11:09:19 1 A No. No. It was a land committee on Big
2 Island.

3 Q Thank you.

4 Next I would like to show the witness the
11:09:35 5 exhibit that was marked as Exhibit A-154, and this is a
6 letter on Sierra Club letterhead Hawaii chapter dated
7 February 4, 1997, addressed to Sandra Malama Solomon and
8 it is signed by Nelson Ho.

9 (Handing document to witness.)

11:10:44 10 Could you take a quick review of this letter
11 quickly and pay attention to the last page where the
12 signature page is and the cc's and see that on Mililani
13 Trask is a cc on this letter.

14 Did you participate with Nelson Ho in drafting
11:11:56 15 this letter?

16 A I'm only on page 3.

17 This letter is pretty accurate in terms of the
18 work that we had all been doing trying to look at the
19 EIS concern about the replacement of the old plan with
11:13:21 20 the new.

21 And we were working -- Senator Solomon was a
22 senator from the Big Island, and we were working with
23 her because she had been following it and was concerned
24 about the -- not only the cultural problems up there,
11:13:36 25 but the audit findings that she didn't feel were being

11:13:42 1 addressed there.

2 But when I look at this document, yes, we were
3 looking at all of these things, you know, the large
4 telescopes coming in. The deregulation was a big
11:13:56 5 concern and a big fear, too, at the time. But, yes, you
6 know, this letter is accurate.

7 Q And you did participate in drafting that letter
8 with Mr. Ho?

9 A I see that I'm cc'd on it.

11:14:11 10 I don't know if I participated in drafting it,
11 but it's pretty accurate in terms of the work that we
12 were doing.

13 Q So it's consistent with discussions and
14 meetings that you had with Mr. Ho at the time?

11:14:22 15 A Yes, yes.

16 Q Did you also meet with or discuss these topics
17 with Kealoha Pisciotto?

18 A Yes.

19 Q Did you also --

11:14:31 20 A She was on the land committee of Ka Lahui for
21 this island.

22 Q Yes. And did you also meet and discuss those
23 issues with Clarence Ching?

24 A With Ku, yes, yes.

11:14:44 25 Q And did you also meet and discuss those issues

11:14:47 1 with Debbie Ward?

2 A You know, the po'o of the Sierra Club at the
3 time was Nelson. I think Debbie was, yes, coming, but I
4 don't know -- Nelson attended every single discussion.

11:15:02 5 But, you know, I don't -- I mean, I don't -- I remember
6 Nelson. You know, he was pretty much the spokesperson
7 for them.

8 Q And did you also meet and discuss the issues
9 that are discussed in that letter with Paul Neves?

11:15:16 10 A Yes. Paul was the lukanela kia'aina to the
11 nation.

12 Q And were there any members of Kahea at the time
13 that you worked with?

14 A You know, I don't recall Kahea. I don't
11:15:33 15 recall Kahea coming in there. But if you give me the
16 names of their board members at the time -- you know, I
17 cannot recall who was on there at the time.

18 Q Okay, thank you.

19 HEARINGS OFFICER AMANO: Mr. Sandison, I'm
11:15:48 20 sorry, but could you identify that document again,
21 please.

22 MR. SANDISON: Excuse me.

23 MR. CAMARA: I have an objection.

24 HEARINGS OFFICER AMANO: Hold on. Let me get
11:16:06 25 an answer to my question and then I'm going to take your

11:16:06 1 objection.

2 MR. SANDISON: This is marked as Exhibit
3 A-154, which is a letter from Nelson Ho on the Sierra
4 Club Hawaii Chapter letterhead to Senator Malama
11:16:20 5 Solomon.

6 HEARINGS OFFICER AMANO: Dated.

7 MR. SANDISON: Dated February 4, 1997.

8 HEARINGS OFFICER AMANO: Thank you. Thank
9 you.

11:16:28 10 Mr. Camara, your objection.

11 MR. CAMARA: I'm not sure that this is
12 relevant to the direct testimony. And if he can offer
13 some sort of proof as to the land questioning and where
14 he's going with this.

11:16:49 15 MR. SANDISON: This is a foundation -- this is
16 a foundational question to -- and it will relate back to
17 direct testimony in this witness' written direct
18 testimony.

19 HEARINGS OFFICER AMANO: Okay. So did you
11:17:03 20 understand? He's building to something that relates
21 back to the written direct testimony. It's foundation.

22 MR. CAMARA: Thank you.

23 HEARINGS OFFICER AMANO: Okay, thank you.

24 But, Mr. Sandison, I do hope we're getting there sooner
11:17:15 25 than later.

11:29:35 1 posted on the Environment Hawaii website which appears
2 at the bottom of the Environment Hawaii article, she
3 stated that the Sierra Club, in particular they couldn't
4 be trusted -- I'm paraphrasing, I don't have it in front
11:29:54 5 of me -- they couldn't be trusted and one had to be
6 concerned about their positions and data.

7 And I wanted to impeach her on this section
8 that she works with Sierra Club and that is what these
9 letters were about.

11:30:13 10 HEARINGS OFFICER AMANO: It goes to the weight
11 of the evidence, but I appreciate your objection
12 Mr. Camara -- Mr. Ono.

13 Okay. Mr. Kaiama, what is it that you need?

14 MR. KAIAMA: Your Honor, if I may, with
11:30:26 15 respect to that evidence Exhibit A that Mr. Sandison
16 spoke about, I would just offer my objection.
17 Ms. Mililani testified yesterday that she had
18 no knowledge of that testimony and mentioned in her
19 direct testimony -- in her cross-examination that she
11:30:45 20 was, in fact, responding to a verbal engagement by the
21 author. And so we would take the position that that
22 article should be entirely --

23 HEARINGS OFFICER AMANO: You know what,
24 Ms. Aluli made an objection at the time, and I made a
11:30:59 25 ruling on that already. So I appreciate your comments,

11:31:01 1 but this will all go to weight.

2 MR. KAIAMA: Thank you.

3 HEARINGS OFFICER AMANO: Mr. Ono for
4 cross-examination.

11:31:08 5 CROSS-EXAMINATION

6 BY MR. ONO.

7 Q Thank you, Your Honor.

8 Good morning, Ms. Trask, Jeff Ono for TMT.

9 A Good morning, Jeff.

11:31:15 10 Q We know each other.

11 A We do.

12 Q I want to talk about the Pele Defense Fund, the
13 original PDF.

14 A Yes.

11:31:24 15 Q You were a member of the Pele Defense Fund; is
16 that right?

17 A My law firm had worked with them at the time,
18 I was a member. I attended their meetings. I would
19 say, yes.

11:31:40 20 As a Kia'aina, you know, you are limited as to
21 what organizations you can join and be member of. For
22 all practical purposes, yes, I did many things with them
23 including ceremony.

24 Q The Pele Defense Fund was formed in 1983 to

11:31:55 25 oppose the development of geothermal power plants on Puna

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) VOLUME 42
 Meter Telescope at the)
 Mauna Kea Science)
 Reserve, Ka'ohe Mauka,)
 Hamakua, Hawai'i TMK)
 (3)4-4-015:009)
 _____)

CONTESTED CASE HEARING

Held on Tuesday, February 28, 2017, commencing at
 9:01 a.m., at the Grand Nanihoa Hotel, Crown Room,
 93 Banyan Drive, Hilo, Hawaii 96720.

BEFORE: Laura Savo, CSR #347

1 an article from Environment Hawaii, which is dated 05:07:29
2 February 2017, and it has to do with -- it concerns 05:07:33
3 Marti Townsend and her testimony at this contested 05:07:44
4 case hearing. And it also contains a comment from 05:07:48
5 the current witness, and I would like to 05:07:53
6 cross-examine her on that comment. 05:07:57

7 HEARINGS OFFICER AMANO: All right. 05:08:03

8 Q (By Mr. Sandison): You're familiar with 05:09:05
9 this article; is that correct, Ms. Trask? 05:09:06

10 A No. I've never actually seen this thing. 05:09:09

11 Q You've never seen this article before? 05:09:12

12 A I don't think so. 05:09:14

13 Q I see. 05:09:15

14 A You're saying that I gave -- I was 05:09:16
15 interviewed for this? 05:09:18

16 Q Could you look at page 3 of 4 on the 05:09:19
17 exhibit? 05:09:40

18 MR. CAMARA: Objection, Your Honor. Is 05:09:43
19 the witness being asked to comment on a document that 05:09:44
20 she's not even included on and she's never seen 05:09:48
21 before? 05:09:51

22 HEARINGS OFFICER AMANO: Well, we're just 05:09:52
23 about to establish that, I think. 05:09:53

24 MR. SANDISON: That's correct. 05:09:55

25 THE WITNESS: I don't think I saw the 05:09:59

1 article. I think I just talked to Pat because this 05:10:00
2 Environment Hawaii, isn't that Pat Tummons? 05:10:03

3 HEARINGS OFFICER AMANO: I'm sorry. Pat 05:10:07
4 what? 05:10:09

5 THE WITNESS: Isn't this the publication 05:10:10
6 of Pat Tummons? 05:10:12

7 Q (By Mr. Sandison): I believe that Pat 05:10:16
8 Tummons is the editor of the Environment Hawaii. 05:10:20

9 A Okay. Okay. Yeah. I remember having a 05:10:22
10 talk with her. It could have been this. Not Marti. 05:10:24
11 But Pat, she was looking at this. She was 05:10:28
12 questioning some of the statements that had been made 05:10:32
13 by Sierra. 05:10:34

14 Q And in the -- on the response starting at 05:10:41
15 the bottom of page 3, which appears to be a written 05:10:43
16 response made February 7th in a reply to the 05:10:50
17 document; right? 05:10:57

18 A Yes. 05:11:00

19 Q You see that; yes? 05:11:00

20 A Yes. 05:11:02

21 Q And it says "Mililani B. Trask"? 05:11:02

22 A Yes. 05:11:04

23 Q Is that you? 05:11:05

24 A Yes. 05:11:06

25 Q And does it say "Aloha, Pat"? 05:11:08

1 A This is not the first time that Marti 05:11:13
2 Townsend hasn't been honest and truthful about 05:11:16
3 matters critical to our people. 05:11:20

4 MS. ALULI: Your Honor, to the extent 05:11:24
5 that this -- 05:11:27

6 HEARINGS OFFICER AMANO: Just a minute,
7 please.

8 Go ahead, Ms. Aluli.

9 MS. ALULI: To the extent that this is 05:11:29
10 being offered to denigrate the testimony of a witness 05:11:31
11 that we offered in, KAHEA, I was aware of this going 05:11:32
12 on. I said, "Judge isn't going to read these papers 05:11:39
13 about Mauna Kea. We don't need to worry about it." 05:11:43
14 Now we object to its introduction in terms of its 05:11:46
15 attempt to impeach someone who's not here, our 05:11:52
16 witness, Marti Townsend -- 05:11:56

17 HEARINGS OFFICER AMANO: Well, let me 05:11:59
18 explore that. I think your objection is out of place 05:11:59
19 at this time, but I appreciate what you're saying. 05:12:02

20 So, Mr. Sandison, can we get to the 05:12:04
21 point? I think the question is whether or not this 05:12:06
22 witness wrote this statement, and then we are not 05:12:08
23 here to address the issue of Ms. Townsend. 05:12:12

24 MR. SANDISON: I don't intend to discuss 05:12:16
25 Ms. Townsend very much at all. 05:12:18

1 HEARINGS OFFICER AMANO: Well, let's get 05:12:21
2 to the point. 05:12:22

3 Q (By Mr. Sandison): Did you write -- did 05:12:23
4 you review this article and did you write these 05:12:24
5 comments? 05:12:26

6 A No, no. I didn't review the article. I 05:12:26
7 didn't see it. But I did have a conversation with 05:12:27
8 Pat a while back about some of the statements that 05:12:29
9 she was getting in terms of Mauna Kea. She was 05:12:32
10 questioning --

11 HEARINGS OFFICER AMANO: Wait.

12 THE WITNESS: -- whether or not they were 05:12:36
13 accurate. 05:12:38

14 HEARINGS OFFICER AMANO: Very 05:12:39
15 specifically, is that comment, which is indicated as 05:12:40
16 "reply" and that appears to bear your typewritten 05:12:43
17 name -- 05:12:46

18 THE WITNESS: Yes. 05:12:47

19 HEARINGS OFFICER AMANO: -- did that come 05:12:47
20 from you? 05:12:48

21 THE WITNESS: Yes. But it wasn't in 05:12:49
22 response to the article 'cause I never saw it. 05:12:50

23 MR. SANDISON: Okay. Thank you. 05:12:54

24 THE WITNESS: I had a call from Pat. 05:12:55

25 MR. SANDISON: Thank you. 05:12:57

C E R T I F I C A T E

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

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 20th day of March 2017 in Honolulu, Hawaii.

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

EXHIBIT 5

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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 14
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 8, 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 MR. FREITAS: Every testimony.

2 HEARINGS OFFICER AMANO: Yes.

3 MR. FREITAS: They have been submitted?

4 HEARINGS OFFICER AMANO: Well, I haven't
5 received it, but that's the cross-examination
6 everyone has relied on.

7 MR. FREITAS: I recall -- and excuse me for
8 my ignorance on this -- I recall that evidence would
9 be accepted at the end of all testimony.

10 HEARINGS OFFICER AMANO: Let me do it this
11 way. So there are submissions, and I'm not going
12 to spend a lot of time --

13 MR. FREITAS: I don't want to change
14 anything, if I got the wrong understanding.

15 HEARINGS OFFICER AMANO: I'm going to
16 explain, but I'm not spending a lot of time on it
17 because we have proceeded quite a ways already with a
18 pretty clear understanding. Everybody you thought
19 you might be called as a witness, for instance let's
20 use the University since they're the only ones who
21 have presented witnesses so far.

22 They have had to submit written direct
23 testimonies all on file, right? It's already
24 uploaded. Everybody has had it for at least two
25 months. However, I did not accept those testimonies

1 in evidence. And the reason is, they may have
2 submitted, and I don't know this for a fact, written
3 direct testimonies for all the witnesses on their
4 witness list, and they might not have called that
5 person. If they don't call that person, I'm not
6 going to receive the written direct testimony without
7 giving you folks a chance to cross-examine, okay?

8 So I haven't received it, but my intention
9 is to receive the written direct testimonies as
10 evidence after they've testified, and I intend to do
11 it all at the end of all the hearings, after we're
12 all done. So it's going to apply to everybody.

13 MR. FREITAS: That clarified, my question
14 was, if it was accepted by you, if every -- after
15 every testimony was accepted by you, but you're
16 allowing everyone to testify first before you accept
17 it. If you did accept it, then would it hinder my
18 right to recall like Wally Ishibashi to
19 cross-examine?

20 HEARINGS OFFICER AMANO: I think I answered
21 this question for you yesterday or the other day, and
22 that is, you have a right to call your own witnesses.
23 You also have a right to call rebuttal, but there has
24 to be a basis. So there are those opportunities for
25 one thing.

1 Number two, what applies to one witness is
2 going to apply to all the witnesses. So if Mr.
3 Ashida is absent one day and happens to be your
4 witness and he's not here to cross-examine, tough.
5 Or same is true for Mr. Ing or anybody else.

6 So that's why you can ask a simple question
7 like you say, hey, the witness is here all the time,
8 would be a simple matter to bring him back up, but
9 the rule has to apply to everyone.

10 MR. FREITAS: I just wanted to know the
11 rule, because you're the Hearing Officer, and I'm
12 trying to follow your rules.

13 HEARINGS OFFICER AMANO: I know, and I
14 appreciate that.

15 MR. FREITAS: And try to understand it and
16 comprehend it.

17 With that understanding now, if someone
18 cross-examines Ms. Nagata and I don't get a chance,
19 let's say I miss my chance, but I want to rebuttal
20 one of the statement she might have said with a
21 witness, am I allowed to do that?

22 HEARINGS OFFICER AMANO: That's a good
23 question. So what would happen is, and we have done
24 in this in the past, applies to everybody. If for
25 some reason you have to leave at 3:00 o'clock, and

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on December 8, 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 8th day of December, 2016, in Honolulu, Hawaii.

/S/ Jean Marie McManus

JEAN MARIE McMANUS, CSR #157

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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, 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:

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EXHIBIT C

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:

6 That on December 16, 2016, at 9:00 a.m., the
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
10 represents, to the best of my ability, a true and
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
22
23
24
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'ohe Mauka, Hāmakua,
Hawai'i, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

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The undersigned certifies that the above-referenced document was served upon the
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