

CARLSMITH BALL LLP
IAN L. SANDISON 5597
JOHN P. MANAUT 3989
LINDSAY N. MCANEELEY 8810
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, HI 96813
Tel No. 808.523.2500
Fax No. 808.523.0842
isandison@carlsmith.com
JPM@carlsmith.com
lmcaneley@carlsmith.com

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

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DEPT. OF LAND &
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STATE OF HAWAII

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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

THE UNIVERSITY OF HAWAI'I AT
HILO'S OPPOSITION TO TEMPLE OF
LONO'S MOTION FOR
RECONSIDERATION MINUTE ORDER
NO. 47, FILED MAY 5, 2017 [DOC. NO.
619]; CERTIFICATE OF SERVICE

**THE UNIVERSITY OF HAWAI'I AT HILO'S OPPOSITION TO
TEMPLE OF LONO'S MOTION FOR RECONSIDERATION
MINUTE ORDER NO. 47, FILED MAY 5, 2017 [DOC. NO. 619]**

Applicant UNIVERSITY OF HAWAI'I AT HILO ("University"), through its counsel,
submits its opposition to the Temple of Lono's (the "Temple") *Motion for Reconsideration
Minute Order No. 47*, filed May 5, 2017 [Doc. No. 619] the ("Motion").

I. INTRODUCTION

The Motion requests that the Hearing Officer reconsider and withdraw Minute Order No.
47 on the following grounds: 1) the Hearing Officer's ruling was pre-ordained; 2) the Hearing
Officer failed to explain why the *New Mexico Ranchers Ass'n v. I.C.C.* opinion is

“incomparable” to the situation here; 3) the ruling confirms that the record is incomplete; and 4) the Hearing Officer demonstrated bias against the Temple by issuing Minute Order No. 47 at this juncture. There is no new evidence or law change that warrants reconsideration. Accordingly, University respectfully requests that the Hearing Officer deny the Motion.

II. ARGUMENT

A. THE MOTION IS YET ANOTHER ATTEMPT TO DELAY THE PROCEEDINGS

The Temple’s motion does not call for the Hearing Officer to reconsider Minute Order No. 47 and grant its *Motion for Summary Judgment (Disqualification)* [Doc. No. 433] (“**Motion to Disqualify**”). Rather, the Temple requests only that the Hearing Officer withdraw its ruling. This is puzzling, considering the Temple has repeatedly complained that motions remain pending in these proceedings and demanded that the Hearing Officer issue rulings. *See Temple’s Motion to Schedule Pending Motions* [Doc. 324]. The Temple’s request presents no new evidence or argument that the Motion to Disqualify should be granted, but rather, appears to be intended to cause delays in the proceedings.

B. THE TEMPLE’S ACCUSATIONS OF BIAS ARE UNFOUNDED AND IRRELEVANT

The Temple argues that Minute Order No. 47 was “pre-ordained” because the Hearing Officer could not possibly be objective about the Temple’s Motion for Disqualification after waiting seven months to rule—*i.e.*, that Hearing Officer’s bias influenced her decision. The Temple’s argument is misplaced. Hearing Officer bias is irrelevant to the University’s purported fitness as an applicant under the subject Conservation District Use Application (“**CDUA**”). Additionally, the accusations of Hearing Officer bias have been rejected previously on multiple occasions. *See, e.g.*, Minute Order No. 9 [Doc. No. 63] (denying motion to disqualify Hearing Officer), Minute Order No. 39 [Doc. No. 406] (denying renewed motions to disqualify Hearing

Officer).

No evidences exists that the Hearing Officer failed to objectively consider and rule upon the Motion to Disqualify. The Temple's and its lawyer's self-serving and unsupported belief to the contrary—without more—does not support reconsideration of Minute Order No. 47.

C. THE HEARING OFFICER IS NOT REQUIRED TO EXPLAIN IN DETAIL HER INTERPRETATION OF CASE LAW

The Temple argues that *New Mexico Navajo Ranchers Ass'n v. I.C.C.*, 702 F.2d 227 (D.C. Cir. 1983) ("*N.M. Ranchers*")—which involved the construction of a rail line under a completely different statute—was “analogous” to the present case. Mot. to Disqualify at 6. Minute Order No. 47 rejected the Temple's argument, finding that *N.M. Ranchers* was not comparable to the present proceedings. Minute Order No. 47 [Doc. No. 609] at 5. Due to the absence of any other supporting relevant authority, the Temple failed to show there was no genuine issue of material fact in dispute and there is no legal basis to change that ruling as a matter of law. *Id.* The reasoning for the Hearing Officer was clear and unambiguous.

Nonetheless, the Temple argues that reconsideration is warranted because the Hearing Officer failed to explain why the case cited in the Motion is “incomparable” to the situation here.¹ Mot. at 3. The Temple does not cite any authority to support its argument that the Hearing Officer's reasoning was deficient. The Temple's Motion does not distinguish how the facts in *N.M. Ranchers* are comparable here. The Temple's dissatisfaction with the Hearing Officer's explanation of her ruling falls far short of the standard for reconsideration.

¹ The University notes the Temple's double standard in complaining that the Hearing Officer's ruling is “without legal support.” Throughout this proceeding and in the present Motion, the Temple has asserted argument after argument without citing any legal authority to support its claims. For the Temple to now assert that the Hearing Officer failed to adequately justify her ruling with legal support is hypocritical and a further example of the Temple's pattern of asserting irreconcilable, untenable positions.

D. THE COMPLETENESS OF THE RECORD IS IRRELEVANT

The Temple notes that Minute Order No. 47 confirms that the record is incomplete. The completeness of the record is irrelevant to the Temple's arguments concerning the University's fitness as the CDUA applicant, and therefore, has no bearing on whether the Hearing Officer should reconsider Minute Order No. 47.


E. THE ALLEGED PREJUDICE EXPERIENCED BY THE TEMPLE DOES NOT ESTABLISH HEARING OFFICER BIAS

The Temple's statements regarding the completeness of the record are particularly puzzling in light of the Temple's assertion that the Hearing Officer was biased simply by ruling against the Temple by issuing Minute Order No. 47. The Hearing Officer's Minute Orders—and the deadlines to file and respond to motions for reconsideration thereof—are binding upon, and applicable to, *all* parties. The Temple's argument that the issuance of minute orders is somehow evidence of specific bias against it exhibits a fundamental misunderstanding of the basic process of civil procedure and the applicable administrative rules and procedure.

I. CONCLUSION

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

DATED: Honolulu, Hawai'i, May 18, 2017.



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

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CERTIFICATE OF SERVICE

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

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

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

DAVE M. LOUIE, ESQ.
CLIFFORD K. HIGA, ESQ.
NICHOLAS R. MONLUX, ESQ.
Kobayashi Sugita & Goda, LLP
dml@ksglaw.com
ckh@ksglaw.com
nrm@ksglaw.com
Special Deputy Attorneys General for
ATTORNEY GENERAL DOUGLAS S. CHIN,
THE DEPARTMENT OF THE ATTORNEY
GENERAL, and DEPUTY ATTORNEYS
GENERAL IN THEIR CAPACITY AS
COUNSEL FOR THE BOARD OF LAND AND
NATURAL RESOURCES and HEARING
OFFICER

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

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

JOSEPH KUALII LINDSEY CAMARA
kualiic@hotmail.com

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

WILLIAM FREITAS
pohaku7@yahoo.com

TIFFNIE KAKALIA
tiffniekakalia@gmail.com

BRANNON KAMAHAHA KEALOHA
brannonk@hawaii.edu

GLEN KILA
makakila@gmail.com

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

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

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

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

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

RICHARD L. DELEON
kekaukike@msn.com

CINDY FREITAS
hanahanai@hawaii.rr.com

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

KALIKOLEHUA KANA ELE
akulele@yahoo.com

MEHANA KIHOI
uhiwai@live.com

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

DONNA H. KALAMA, ESQ.,
Deputy Attorney General
donna.h.kalama@hawaii.gov
*Counsel for the Honorable DAVID Y. IGE, and
BLNR Members SUZANNE CASE and
STANLEY ROEHRIG*

E. KALANI FLORES
ekflores@hawaiiintel.net

DEBORAH J. WARD
cordylinecolor@gmail.com

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

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

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

CRYSTAL F. WEST
crystalinx@yahoo.com
Witness for Hearing Officer

CLARENCE KUKAUAKAHI CHING
kahiwaL@cs.com

B. PUALANI CASE
puacase@hawaiiintel.net

PAUL K. NEVES
kealiikea@yahoo.com

WILMA H. HOLI
P. O. Box 368
Hanapepe, HI 96716
w_holi@hotmail.com
Witness for the Hearing Officer
(via email & U.S. mail)

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

DATED: Honolulu, Hawai'i, May 18, 2017.



IAN L. SANDISON
JOHN P. MANAUT
LINDSAY N. MCANEELEY

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO