

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)	Minute Order No. 50
Use Application (CDUA) HA-3568 For the)	(Denying Reconsideration of
Thirty Meter Telescope at the Mauna Kea Science)	Minute Order No. 43)
Reserve, Ka`ohe Mauka, Hamakua, Hawai`i)	
)	
)	Certificate of Service
)	
)	

MINUTE ORDER NO. 50
(Denying Reconsideration of Minute Order No. 43)

Minute Order No. 43 (Setting Post-Hearing Deadlines) (“Minute Order No. 43”), was filed in the Documents Library on or about April 18, 2017. The document bears the date “April 19, 2017” above the signature of the Hearing Officer. The deadline to file any motion to reconsider Minute Order No. 43 is April 26, 2017, 5 business days after April 19th. The deadline to file responses to any motion to reconsider is May 3, 2017, 5 business days after April 26th.

The following documents have been filed in relation to Minute Order No. 43:

Doc. #	Filed	Party	Title
557	25-Apr-17	C Freitas	Cindy Freitas Memorandum in Support of Motion for Reconsideration of Minute Order 43
558	25-Apr-17	Flores-Case	Flores-Case 'Ohana's Motion to Reconsider Minute Order No. 43; Memorandum in support of motion
559	25-Apr-17	Lono	Temple of Lono Motion for Reconsideration of Minute Order 43

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State of Hawaii
2017 May 23 1:46 pm

560	25-Apr-17	Ward	Deborah J Ward Joinder to Temple of Lono Motion for Reconsideration of Minute Order 43
561	25-Apr-17	Pisciotta, Anaina Hou, Neves	Petitioners Kealoha Pisciotta, Mauna Kea Anaina Hou, and Paul K. Neves Join with Temple of Lono's Memorandum in Support of Motion for Reconsideration of Minute Order 43* *the substance of the motion relates to evidence and not deadlines
562	26-Apr-17	C Freitas	Errata re: Cindy Freitas Memorandum (sic) Support of Motion for Reconsideration of Minute Order 43
563	26-Apr-17	Kihoi	Mehana Kihoi's Joinder to Temple of Lono Motion for Reconsideration of Minute Order 43
564	26-Apr-17	Anaina Hou	Mauna Kea Anaina Hou et al. Joinder
565	26-Apr-17	Sleightholm	J. Leina`ala Sleightholm Joinder to Temple of Lono Motion for Reconsideration of Minute Order 43
567	26-Apr-17	Kealoha	Kamahana Kealoha Joinder to Temple of Lono Motion for Reconsideration of Minute Order 43
568	26-Apr-17	W Freitas	William Freitas Motion to Reconsideration of Minute Order No. 43; Memorandum in Support of Motion to Reconsideration of Minute Order No. 43
572	27-Apr-17	Ching	Clarence Kukaukahi Cing's Joinder of Temple of Lono Motion fo Reconsideration of Minute Order 43 and Memorandum in Support [sic]
592	2-May-17	UHH	University of Hawaii at Hilo's opposition to the Flores-Case Ohana's motion to reconsider Minute Order No. 43; Declaration of counsel; Exhibits 1 to 6
593	2-May-17	UHH	University of Hawaii at Hilo's joinder to TMT's Opposition to (1) Cindy Freitas Memorandum in Support of Reconsideration of Minute Order 43, Filed 4/25/17 [Doc No. 557] and (2) Errata Re Cindy Freitas Memorandum in Support of Motion for Reconsideration of Minute Order 43, Filed 4/26/17 [Doc 562]

594	2-May-17	UHH	University of Hawaii at Hilo's opposition to the Temple of Lonos motion for reconsideration of Minute Order 43 [Doc. 559]; Exhibits 1 to 5; Declaration of counsel
596	2-May-17	TIO	TMT International Observatory, LLC's opposition to (1) Cindy Freitas memorandum in support of motion for reconsideration of Minute Order 43, filed 4/25/17 [Doc. No. 557] and (2) Errata re Cindy Freitas memorandum in support of motion for reconsideration of Minute Order 43, filed 4/26/17 [Doc. No. 562]
597	2-May-17	TIO	TMT International Observatory, LLC's joinder to University of Hawaii at Hilo's opposition to the Flores-Case Ohana's motion to reconsider Minute Order No. 43 (Doc 558); Declaration of counsel; Exhibits 1 to 6
598	2-May-17	TIO	TMT International Observatory, LLC's joinder to University of Hawaii at Hilo's opposition to the Temple of Lonos motion for reconsideration of Minute Order 43 [Doc. 559]
604	3-May-17	TIO	TMT International Observatory, LLC's opposition to William Freitas motion to reconsideration of Minute Order No. 43 [Doc. No. 568]; Declaration of Ross T. Shinyama, Esq.; Exhibits "1" - "11"
607	3-May-17	UHH	The University of Hawaii at Hilo's joinder to TMT International Observatory, LLC's opposition to William Freitas motion to reconsideration of Minute Order No. 43 [Doc. No. 568]

MOTIONS FOR RECONSIDERATION

Doc. Nos. 557, 558, 559, 560, 561, 562, 563, 564, 565, 567, and 568 are eleven motions seeking to have Minute Order No. 43 (Setting Post-Hearing Deadlines), reconsidered. **Doc. No. 572, Clarence Kukauakahi Ching's Joinder of Temple of Lono Motion For Reconsideration, was emailed on Thursday, April 27, 2017; it is past the deadline and therefore was not considered in the decision leading to this Minute Order.**

The movants have set out the following reasons, *inter alia*, as bases for reconsideration of the deadlines:

- There has been no “opportunity to inspect the transcripts or have any consultation “on the processes of the transcripts if there should be any eras?” [sic] and “I reserved the right to make corrections as needed to the transcript and reserve time to make; those corrections to all 44 volumes and Volumes i-vii as deem.” [sic] (Doc. No. 557 at page numbered “1”);
- There are “numerous Motion and Request that has not been addressed as properly”; she lists the following (Doc. No. 557 at pages numbered “1” and “2”):
 1. Request for Continuance for time DOC 89 filed on July 18, 2016
 2. Site Visit Proposal DOC 220 filed on August 17, 2016
 3. Motion to file Motion out of Time DOC 227 filed on August 22, 2016 (Have been considered in relation to the motion Minute Order 33 DOC 356 [sic])
 4. Motion to withdrawal Ku’uipo Freitas as witness DOC 250 filed September 1, 2016
 5. Memorandum In Support of Petitioners Mauna Kea Anaina Hou, Et Al’s Request for Further Status Conference and or Consideration of Proposed Scheduling DOC 259 filed September 12, 2016
 6. Motion to Amend DOC 274 Site visit to include request in DOC 220. DOC 278 filed September 21, 2016
 7. Motion to Amend DOC 281 Minute Order No 19. DOC 284 filed September 26, 2016
 8. Motion to Object to phone call by Michael Cain on 9/23/16 that was instructed by Hearing Officer Riki Amano (Ret.) DOC 290 filed September 26, 2016
 9. Objection to September 26, 2016 site Visit on Mauna Kea DOC 290 filed September 27, 2016
 10. Respond to Proposed DOC 256 all issues should also be considered. DOC 297 filed October 3, 2016
 11. Motion for Extension of Time for Filing of Motions, witness and Exhibit Lists and Direct Testimonies and pre-Haring Statement DOC 305 filed October 4, 2016
 12. Objection to all Minute Order No. _ That was filed in the Document Library on October 5, 2016 DOC 322, 321, 320, 329, 318, 317, 316, 315, 314, 313, 312, 311, 309 and 308. DOC 333 filed October 7, 2016. (Minute Order No. 22 states premature filing of a motion for reconsideration)

13. Motion to Dismiss Contested Case Hearing RE Conservation Use Application HA-3568. DOC 391 filed October 18, 2016.
 14. Cindy Freitas joinder to Temple of Lono's Motion to Board of Land and Natural Resources to Dismiss HA-3568 DOC 529 filed March 22, 2017
 15. Cindy Freitas Joinder to Mauna Kea Anaina Hou Motion Requesting to Respond to Exhibit Objection DOC 530 filed March 22, 2017
 16. Cindy Freitas, William Freitas and Clarence Kukaiakahi Ching's Motion for Joinder of Temple of Lono's Motion for Protective Order DOC 548 filed March 25, 2017
- Inconsistent deadlines for reconsiderations set out in previous minute orders compared with Minute Order 43 and 44:

“In the begin of this Contested Case the process for filing submission, motion to reconsider and responses to motions to reconsider although the Hearing Officer though objections from numerous parties on the process of filing submission has created a patter that will make the process more sufficient for all parties who is also located on other islands. This shows me that there is a bias on the part of the hearing Officer to change the process in Minute Order 43 and 44 under filings and this also takes my due process right away.” [sic] Doc. No. 557 at pp. 4-5.
 - The date Minute Order 43 was filed in the Documents Library (April 18, 2017) and the date Minute Order 43 was signed on April 19, 2017;
 - “Due to the volume, extent and complexity of the exhibits, motions, minute orders, transcripts, and other filings, significantly more time to adequately prepare a DO/FOF/COL is required. Likewise, significantly more time to adequately prepare a response to DO/FOF/COL to be filed by other parties is also required. If these deadlines are not reconsidered, it is very clear that this would result in substantial harm and injury for pro se parties such the FLORES-CASE ‘OHANA and would indeed violate our constitutionally protected rights of due process.” Doc. No. 558 at p. 4;
 - Some Petitioners are *Pro Se* and are “biased if they must continue to argue over the admission/admissibility of exhibits while simultaneously being asked to complete finds of fact, conclusions of law etc.,” Doc No. 564 at p. 1
 - the record is incomplete due to pending motions;
 - an outstanding motion submitted on or about March 19, 2017, to the Board of Land and Natural Resources may be dispositive of the entire case and further demonstrates the incompleteness of the record;
 - the determination of evidence is yet ongoing due to the reconsideration process related to Minute Order No. 44;

- imposition of deadlines while the record is incomplete “violated the due process rights of the parties” (Doc. No. 559 at page 5);
- the deadlines are “unduly restrictive as the time provided for filing of decisions, order, findings of fact, and conclusions of law” and unreasonable. (Doc. No. 559 at pp. 5 and 7); and
- Minute Order 43 allegedly in violation of Hawai’i Administrative Rules (“HAR”) 13-1-38; specifically:

(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)

* * *

OPPOSITIONS TO MOTIONS FOR RECONSIDERATION

Doc. Nos. 592, 593, 594, 596, 597, 598, 604 and 607 are eight oppositions to motions for reconsideration, or joinders, submitted by the University of Hawai`i at Hilo (“UHH”) and TMT International Observatory, LLC (“TIO”). UHH and TIO offer the following reasons, *inter alia*, that the reconsiderations should be denied:

- The deadlines in Minute Order No. 43 are reasonable; Doc. No. 592 at page 3;
- Extensions of time were built into the deadlines established by Minute Order No. 43, after considering all circumstances and facts;
- The deadlines do not violate due process rights; Doc. No. 592 at page 3;
- There are no due process rights to copies of hearing transcripts; Doc. No. 592 at pp. 5-6;
- Pending motions do not affect the timeline for submission of the FOF/COL; Doc. No. 592 at pp.6-7;
- There is no legal authority to support movants’ arguments that pending motions forestall the establishment of deadlines for the FOF/COL; Doc. No. 592 at pp. 6-7;
- Contrary to the argument that HAR §13-1-38(a) requires the deadline to be set “[A]fter all evidence has been taken”, the plain reading of the rule does not impose any such limitation; rather, the “rule limits only when the parties may submit their

proposed FOF/COL” (Doc. 592 at p. 7), which is “not later than ten days after the transcript is prepared and available, unless the presiding officer shall otherwise prescribe.”;

- The Hearing Officer has broad authority under HAR §13-1-32(c) to “regulate the course and conduct of the hearing, including the setting of deadlines.” Doc. 592 at page 7 and Doc. 594 at page 2;
- Untimely motions are insufficient reasons for delay; specifically, the Temple of Lono’s outstanding motions “were filed well past the deadline for pre-hearing motions and were therefore untimely.” Doc. No. 594 at page 4;
- The Hearing Officer was “mindful of the *pro se* status of the intervenors at every turn and made every reasonable effort to accommodate them.” Doc. No. 594 at page 8;
- The procedure for filing and submitting FOF/COL set forth in Minute Order No. 43, is consistent with the procedures utilized throughout this contested case hearing; claims that “the Hearing Officer changed the procedure to negatively impact the anti-TMT Petitioners/Intervenors is therefore completely meritless.” Doc. No. 596 at page 6; and
- Setting a schedule for motions for reconsideration of Minute Order No. 44 (regarding documentary evidence), does “not prohibit the Hearing Officer from setting the deadlines to submit proposed D&Os, FOFs, and COLs under HAR §13-1-38(a)” because the phrase “[a]fter all evidence has been taken” refers to “the time when parties may submit their proposed D&Os, FOFs, and COLs” and “does not refer to the timing of when a Hearing Officer can or cannot set the deadlines to submit proposed D&Os, FOFs, and COLs”; Doc. No. 604 at page 7.

DECISION

The deadlines do not violate parties’ due process rights; Numerous reminders about deadlines for proposed D&Os, FOF/COLs were given; the deadlines were reasonably expanded.

HAR §13-1-38(a) sets out a ten-day deadline after the transcript is prepared and available, for filing the proposed D&Os, FOF/COLs “unless the presiding officer shall otherwise prescribe.” As early as October 2016, the Hearing Officer told the parties that the ten-day deadline would be expanded to two weeks. At the end of the hearing in early March 2017, the Hearing Officer announced that the deadline would be expanded to 30 days. The final deadline set pursuant to Minute Order No. 43, provided 38 days after all transcripts were made available

to the parties for viewing. Clearly, the deadlines ultimately decided were thoughtfully considered and expanded as the hearing and the case progressed.

If the parties are unprepared to meet the deadlines set forth, it is not because they were not warned. TIO presents the following summary of the Hearing Officer's admonitions, in its opposition (Doc. No. 604 at pp. 3-4) to William Freitas' motion for reconsideration:

- 10/31/2016 The Hearing Officer notifies the parties that proposed D&Os, FOFs, and COLs are going to be due **two weeks** after the transcripts are available. She also notifies the parties that sample D&Os, FOFs, and COLs have been uploaded to the Documents Library to assist the parties in their drafting. See Transcript of Contested Case Hearing, Vol. 6, dated October 31, 2016 at 249:19-251:24, attached as Exhibit "1" to the Declaration of Ross T. Shinyama ("Shinyama Dec.").
- 11/16/2016 The Hearing Officer reminds the parties of her inclination that proposed D&Os, FOFs, and COLs will be due **two weeks** after the transcripts are available. She also reminds the parties that sample D&Os, FOFs, and COLs have been uploaded to the Documents Library. She recommends to the parties to begin drafting their proposed D&Os, FOFs, and COLs. See Transcript of Contested Case Hearing, Vol. 9, dated November 16, 2016, at 11:5-12:72, attached as Exhibit "2" to the Shinyama Dec.
- 12/13/2016 The Hearing Officer repeats her recommendation to the parties to begin drafting their proposed D&Os, FOFs, and COLs. See Transcript of the Contested Case Hearing, Vol. 16, dated December 13, 2016, at 218:4-7, attached as Exhibit "3" to the Shinyama Dec.
- 12/16/2016 The Hearing Officer again mentions her inclination of a **two week** deadline for proposed D&Os, FOFs, and COLs. See Transcript of the Contested Case Hearing, Vol. 17, dated December 16, 2016, at 233:20 - 234:8, attached as Exhibit "4" to the Shinyama Dec.
- 12/20/2016 The Hearing Officer reminds the parties to work on their proposed D&Os, FOFs, and COLs. See Transcript of the Contested Case Hearing, Vol. 19, dated December 20, 2016, at 241:10-22, attached as Exhibit "5" to the Shinyama Dec.
- 1/5/2017 The Hearing Officer reminds the parties of her inclination that proposed D&Os, FOFs, and COLs will be **due two weeks after the transcripts are available**. She notes that she may re-evaluate her deadline at the end of the contested case hearing. See Transcript of the Contested Case Hearing, Vol. 22, dated January 5, 2017, at 9:22-10:1, attached as Exhibit "6" to the Shinyama Dec.

- 1/12/2017 The Hearing Officer reminds the parties to work on their proposed D&Os, FOFs, and COLs. See Transcript of the Contested Case Hearing, Vol.25, dated January 12, 2017, at 231:16-24, attached as Exhibit "7" to the Shinyama Dec.
- 1/31/2017 The Hearing Officer reminds the parties of her inclination that proposed D&Os, FOFs, and COLs will be due **two weeks** after the transcripts are available. She notes that she may re-evaluate her deadline at the end of the contested case hearing. See Transcript of the Contested Case Hearing, Vol. 33, dated January 31, 2017, at 256:8-20, attached as Exhibit "8" to the Shinyama Dec.
- 3/1/2017 The Hearing Officer notifies the parties that she has reconsidered her deadline for proposed D&Os, FOFs, and COLs and is extending it to **30 days** after the transcripts are available. She also notifies the parties that they will have two weeks to submit objections to the other parties' proposed D&Os, FOFs, and COLs. See Transcript of the Contested Case Hearing, Vol. 43, dated March 1, 2017, at 255:16-257:2, attached as Exhibit "9" to the Shinyama Dec.
- 3/2/2017 The Hearing Officer repeats that proposed D&Os, FOFs, and COLs are going to be due **30 days** after the transcripts are available. See Transcript of the Contested Case Hearing, Vol. 44, dated March 2, 2017, at 296:9-76, attached as Exhibit "10" to the Shinyama Dec.

All arguments favoring reconsideration on the grounds of insufficient time to prepare are unsupported by the record.

Chronology of this case supports the deadlines (italicized dates are non-hearing events).

The deadlines for filing the proposed D&Os, FOF/COLs and the responses thereto, set out in Minute Order No. 43, were not decided in isolation or arbitrarily. The entire contested case proceeding, the hearing, and other factors were considered. A review of the chronology of this case supports the deadline of May 30, 2017, as being reasonable and consistent with the procedure that had been undertaken from the inception of this contested case hearing.

- May 16, 2016** **Pre-hearing conference;** establish Record for contested case hearing; set schedule regarding applications, motions, requests to intervene as a party; set hearing on interventions and 2nd pre-hearing conference for June 17, 2016 (Minute Order Nos. 7 and 8)
- June 17, 2016** **Hearings on applications, motions or requests to intervene as a party; 2nd pre-hearing conference** setting deadlines for filing pre-hearing motions, responses to pre-hearing motions, Witness Lists, Objections to Witness Lists, motion to reconsider dismissal; setting hearing for pre-

hearing motions and 3rd pre-hearing conference for August 5, 2016 (Minute Order No. 13)

July 21, 2016

Minute Order No. 13 filed, reflecting determination of intervention motions and identification of parties; Site Inspection being planned for one day in August and evidentiary contested hearing scheduled for several days during month of October; further discussion to be undertaken at 3rd pre-hearing conference on August 5, 2016

August 5, 2016

Hearing on pre-hearing motions; continued hearing on pre-hearing motions and 3rd pre-hearing conference set for August 12, 2016

August 12, 2016

2nd hearing on pre-hearing motions; 3rd pre-hearing conference addressing preparation for contested case hearing, *inter alia*: amended filing/submission procedures to “maintain an accurate and orderly documents filing system for everyone to use effectively”; set Site Visit to Mauna Kea for September 26, 2016; notified parties that the contested case hearing “is likely to be scheduled for several weekdays during the month of October, 2016” and advised that deadlines for pre-hearing statement, final witness lists with written direct testimony, exhibit lists, and Statements of party designating witnesses to cross-examine would be set; assigned exhibit identification letters to each party along; continued hearing on pre-hearing motions to August 29, 2016 (Minute Order No. 16)

September 23, 2016

Minute Order No. 19 filed following hearing on Perpetuating Unique Educational Opportunities, Inc.’s Motion to Set Issues (Doc. 99), on August 29, 2016; Order Setting Issues:

- Is the proposed land use, including the plans incorporated in the application, consistent with Chapter 183C of the Hawai`i Revised Statutes, the eight criteria in HAR §13-5-30(c), and other applicable rules in HAR, Title 13, Chapter 5 Conservation District?
- Is the proposed land use consistent with Article XII, Section 7 of the Hawai`i State Constitution and *Ka Pa`akai O Ka`Aina v. Land Use Comm’n. State of Hawai`i*, 94 Hawai`i 31, 7 P.3d. 1068 (2000)?
- Is the proposed land use consistent with Article XI, Section 1 of the Hawai`i State Constitution and the public trust doctrine?

The following issues **will not** be addressed in this contested case hearing inasmuch as: (1) they are not germane to the above-identified issues relating to this contested case hearing; and (2) the Hearing Officer has already been found to have subject matter jurisdiction to conduct the contested case hearing, as authorized by the Board; see, Minute Order 14 Denying Dwight J. Vicente’s Motion to Disqualify Judge Riki Mae [sic] Amano (Ret.); *State of Hawaii Lack of Jurisdiction to Hear This Contested Case Hearing* [Doc. 124], citing the U.S. Supreme Court decision in *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009):

- The sovereignty of the Kingdom of Hawai'i or any other issues relating to the purported existence of the Kingdom of Hawai'i;
- Challenges to the legal status of the State of Hawai'i; and
- Challenges to the State's ownership of and title to the lands related to this contested case hearing. Order Setting Issues. To the extent applicable, this Minute Order shall also serve as an Order Setting Issues pursuant to HRS §91-9(b)(4).

September 26, 2016 Site Visit to Mauna Kea (Minute Order Nos. 16 and 18)

October 3, 2016 Fifth Pre-hearing conference; the purpose of the pre-hearing conference was to discuss: deadline for submission of pre-hearing statements, scheduling of witnesses and all other matters related to an orderly hearing process (Minute Order No. 20); counsel for Mauna Kea Anaina Hou advises that he has out-of-state commitment; he is scheduled to leave Hawai'i on Friday, October 7, 2017 (Transcript, Vol. vi, dated October 3, 2016, at 12:19-21) and return on Friday, October 14, 2016 (Transcript, Vol. vi, dated October 3, 2016, at 13:3-5); pre-hearing conference set for October 17, 2016 with the admonition that UHH should be prepared to begin testimony on the 18th (Transcript Vol. vi, dated October 3, 2016 at 79:4-7)

October 10, 2016 Notice of Withdrawal of Counsel Richard Naiwieha Wurdeman

October 17, 2016 Sixth Pre-hearing conference; confirmed Wurdeman's former clients willing and able to represent themselves; KAHEA counsel, Yuklin Aluli (co-counsel Dexter Kaiama), entered appearance; set hearing to begin on October 20, 2016 (Transcript Vol. viii, dated October 17, 2016)

October 20, 2016 - March 2, 2017 Hearing; 71 witnesses testified in 44 days of hearing, during this 133-day period; all witnesses direct testimonies were proffered via Written Direct Testimony ("WDT") submitted well in advance of the testimony; witnesses were allowed up to 10 minutes to supplement their WDTs at the beginning of testimony; each party present was allowed to cross-examine each witness and the offeror of the witness was allowed to re-direct; the normal course of each day also included approximately 30-40 minutes of "housekeeping" time at the end of the day, to confirm the appearance of witnesses for the next hearing; answer any questions about procedure, witnesses and/or exhibits; discuss scheduling of hearing dates, witnesses and scheduling conflicts, etc.

October 31, 2016 SAMPLES: Findings of Fact, Conclusions of Law, Decisions and Orders (FOF, COL, D&O) (Doc. Nos. 408a, 408b, 408c)

April 18-22, 2017 **Transcripts received and delivered to designated public libraries;** 47 days after the last day of testimony on March 2, 2017

May 30, 2017 **Deadline** for proposed D&Os, FOFs/COLs; **38 days** after April 22, 2017, the latest date the transcripts are made available for public viewing

June 13, 2017

Deadline for responses to proposed D&Os, FOFs/COLs; 14 days after the deadline for the proposed D&Os, FOFs/COLs

Considering the entirety of this proceeding and all legal requirements, there is ample reason that May 30, 2017, 38 days after the transcripts were made available to the parties' through designated public libraries and the UHH library, is a reasonable deadline for the submission of the D&Os and FOF/COLs.

Insufficient time to review and correct transcripts is no reason to extend the deadlines.

Some movants have argued that deadlines for the D&O, FOF/COL should not be set until they have a chance to read through and correct all of the hearing transcripts. There is no authority cited and further, it is not the practice of any tribunal of record to allow such review and correction. Deposition transcripts are often reviewed by deponents and corrections, if any, are attached to the transcripts. But this is not the same for transcripts of proceedings like hearings or trials; such transcripts are not reviewed and stand as the state of the record.

The inability of parties to review and correct the contested case hearing transcripts is not grounds for reconsideration of the deadlines.

Establishment of deadlines is not premature.

Movants have argued that HAR §13-1-38(a) limits the setting of deadlines until “[a]fter all the evidence is taken.” They contend that Minute Order No. 44 regarding documentary evidence is in the reconsideration period and therefore, the state of the evidence is yet to be determined. Further, movants’ assert that they are unable to work on the D&Os, FOF/COLs until the record is complete; they argue that deadlines should be extended to provide adequate time thereafter.

HAR §12-1-38(a) does not limit when the deadlines may be set. “Based on the plain reading of the rule, the rule limits only when the parties may submit their proposed FOF/COL. It

imposes no limitation on when the presiding officer may set submission deadlines.” Doc. No. 592 at page 7. “[S]pecifically the phrase “[a]fter all evidence has been taken[,]” refers to the time when parties may submit their proposed D&Os, FOFs, and COLs. Id. It does not refer to the timing of when a Hearing Officer can or cannot set the deadlines to submit proposed D&Os, FOFs, and COLs. Instead, HAR § 13-1-32(c) grants the Hearing Officer with broad power to “fix times for submitting documents, briefs, and dispose of other matters that normally and properly arise in the course of a hearing Id.” Doc. No. 604 at page 7.

HAR §13-1-38(a) does not condition the setting of deadlines on the receipt of all evidence such as exhibits moved into evidence post-hearing. Rather, the only limitation in the rule is that the deadlines cannot be “less than ten days after the transcript is prepared and available”. The deadline of May 30, 2017 exceeds the ten-day limitation by almost three weeks. Therefore, Minute Order No. 43 complies with the administrative rule.

Other challenges to Minute Order No. 43, setting deadlines, are meritless.

Movants raise myriad other reasons that the deadlines should be reconsidered. The arguments set forth by UHH and TIO in opposition, summarized in this Minute Order at “Oppositions to Motions for Reconsideration”, are incorporated herein by reference and serve as reasons to deny the motions for reconsideration.

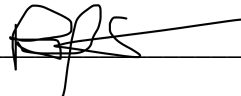
To some extent, proffered arguments appear to be stream of consciousness comments; i.e. challenges to the exhibits “creates the potential for a due process challenge to the outcome of the contested case.” Doc. 560 at page 2, Doc. 563 at page 2; “While due process violations in this proceeding are so frequent that they have become expected, this final attack by the Hearing Officer on the ability of the Protector Interveners to participate and make their case is so blatant that a motion to recuse would be warranted, if it were not for the fact that the Hearing Officer

will simply ignore such a motion. See DOC-262 (Motion to Recuse Hearing Officer) never considered or ruled upon.” Doc.559 at page 7.

All in all, movants’ asserted grounds are insufficient reasons to reconsider Minute Order No. 43. The eleven motions seeking to have Minute Order No. 43 (Setting Post-Hearing Deadlines) reconsidered, Doc. Nos. 557, 558, 559, 560, 561, 562, 563, 564, 565, 567, and 568, are **DENIED**.

IT IS SO ORDERED.

DATED: Honolulu, Hawai`i, May 23, 2017_____.



Judge Riki May Amano (Ret.)
Hearing Officer

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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

BLNR Contested Case HA-16-02
Document title: **Minute Order 50**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by email (when indicated) on May 23, 2017 and by regular mail on May 23, 2017:

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Date: *May 23 2017*