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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Attorneys for
TMT INTERNATIONAL OBSERVATORY, LLC

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF

A Contested Case Hearing Re Conservation
District Use Permit (CDUP) HA-3568 for the
Thirty Meter Telescope at the Mauna Kea
Science Reserve, Kahohe Mauka, Hamakua
District, Island of Hawaii, TMK (3) 4-4-
015:009

Case No. BLNR-CC-16-002

**TMT INTERNATIONAL
OBSERVATORY, LLC'S OPPOSITION
TO MAUNA KEA ANAINA HOU ET AL.
MOTION FOR RECONSIDERATION OF
MO NO. 49 [Doc. No. 643];
CERTIFICATE OF SERVICE**

**TMT INTERNATIONAL OBSERVATORY, LLC'S OPPOSITION TO MAUNA
KEA ANAINA HOU ET AL. MOTION FOR RECONSIDERATION OF
MO NO. 49 [Doc. No. 643]**

COMES NOW, TMT International Observatory, LLC ("TIO"), by and through its
counsel, Watanabe Ing LLP, and hereby submits this memorandum in opposition to Mauna Kea
Anaina Hou Et Al. Motion for Reconsideration of MO No. 49 [Doc. No. 643] ("Motion for
Reconsideration").

I. DISCUSSION

Pursuant to Hawaii Administrative Rules (“HAR”) § 13-1-39(a), “the board may reconsider a decision it has made on the merits only if the party can show that: (1) new information not previously available would affect the result; or (2) a substantial injustice would occur.” Mauna Kea Anaina Hou, Kealoha Pisciotta, and Paul Neves (collectively, the “Movants”) have not shown either in this case, and consequently, the Motion for Reconsideration should be denied.

A. Movants failed to present any “new information not previously available.”

In its Motion for Reconsideration, Movants argue that the Board of Land and Natural Resources (“BLNR”) should reconsider its decision in Minute Order No. 49 [Doc. No. 637] which denied the Petition for Online Access to Transcripts, filed May 5, 2017 [Doc. No. 622] (“Petition”). However, Movants do not cite to any “new information not previously available that would affect the result” and consequently do not satisfy the standard set forth in HAR § 13-1-39(a) to grant reconsideration.

Instead, on page 15 of the Motion for Reconsideration, Movants restate their argument that BLNR should be required to provide Movants with a “searchable, digital copy of the transcripts,” claiming that the placement of hard copy transcripts in various libraries is insufficient. Those are the same arguments that Movants made on pages 1-2 of the Petition when Movants (and certain other petitioners) requested that BLNR “produce the transcript of this proceeding online, in searchable form, that can be cut and pasted to all parties” because they “do not consider the access provided by the placement of hard copy transcripts in the public libraries to be adequate nor to satisfy the legal requirements for facilitating public participation in a contested case.”

Those are also the same arguments that TIO opposed in its Opposition to Parties' Petition to the Board for Online Access to the Transcripts, filed May 10, 2017 [Doc. No. 627] ("Opposition"), which is incorporated herein by reference. The Opposition established that nothing in HRS Chapter 91, the Rules of Practice and Procedure or OIP Opinion Letter No. 95-22 requires BLNR to make the hearing transcripts available online. The BLNR already reviewed, evaluated, and took into consideration Movants' arguments and TIO's Opposition when it issued Minute Order No. 49.

It is important to point out that nowhere in the Motion for Reconsideration do the Movants even attempt to argue that they are presenting new information that was previously unavailable. Indeed, the Motion for Reconsideration does not acknowledge or cite to the standard set forth in HAR § 13-1-39(a) at all. Accordingly, the Motion for Reconsideration should be denied because Movants have failed to present any new information not previously available.

B. Movants failed to establish "substantial injustice."

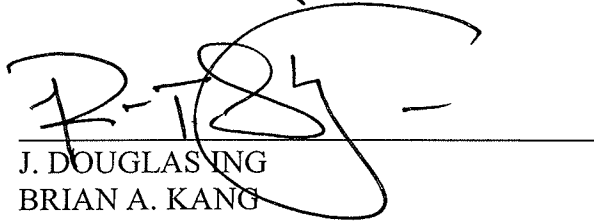
Movants similarly fail to establish that the Motion for Reconsideration should be granted due to "substantial injustice." There is no "substantial injustice" created by making transcripts available to the parties at various libraries in Hawaii at no cost to the parties. No law requires BLNR to do this; instead, BLNR has done so voluntarily for the convenience and benefit of the parties. Unsatisfied with this gesture of good faith, Movants have objected in hopes that they can obtain an electronic copy for free, without acknowledging that they have indeed been provided such access through the Office of Hawaiian Affairs. As has been evident in the filings for this proceeding, the Motion for Reconsideration is another attempt to delay these proceedings, without having a colorable basis, let alone any basis at all that satisfies the

standards for reconsideration set forth in HAR § 13-1-39(a). Having failed to establish any “substantial injustice,” the Motion for Reconsideration must be denied.

II. CONCLUSION

For the foregoing reasons, and all reasons appearing in the record, TIO respectfully requests that Movants’ Motion for Reconsideration be denied.

DATED: Honolulu, Hawaii, May 26, 2017.

A handwritten signature in black ink, appearing to read "J. Douglas Ing", is written over a horizontal line. The signature is stylized and somewhat cursive.

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

BLNR Contested Case HA-16-002

CERTIFICATE OF SERVICE

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The undersigned hereby certifies that the attached document was served upon the following parties by the means indicated:

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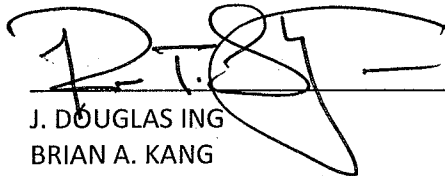
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DATED: Honolulu, Hawaii, MAY 26 2017



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