

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. 54
Use Application (CDUA) HA-3568 For the	)	(Order Denying William Freitas'
Thirty Meter Telescope at the Mauna Kea Science	)	Motion to Amend Doc 281 Minute
Reserve, Ka`ohe Mauka, Hamakua, Hawai`i	)	Order 19 (Doc. 283), Temple of
TMK (3) 4-4-015:009	)	Lono Motion for Reasoned
	)	Explanations and Extension of Time
	)	(Doc. 286), Joseph Kualii Lindsey
	)	Camara's Motion to Reconsider
	)	Minute Order 19 (Doc. 291) and
	)	Temple of Lono Motion for
	)	Reconsideration (Doc. 293))
)	
	)	Certificate of Service

MINUTE ORDER NO. 54

(Order Denying William Freitas' Motion to Amend Doc 281 Minute Order No. 19 (Doc. 283), Temple of Lono Motion for Reasoned Explanations and Extension of Time (Doc. 286), Joseph Kualii Lindsey Camara's Motion to Reconsider Minute Order 19 (Doc. 291) and Temple of Lono Motion for Reconsideration (Doc. 293))

This Minute Order No. 54 addresses four motions ("Motions" collectively) seeking to have Minute Order No. 19 reconsidered. William Freitas filed a Motion to Amend Doc 281 Minute Order No. 19 (Doc. 283), dated September 25, 2016 ("Freitas Motion")¹. The Temple of Lono filed Temple of Lono Motion for Reasoned Explanations and Extension of Time (Doc. 286), filed on September 26, 2016 (received on 9/25/16) ("Lono Motion 1"). Joseph Kualii

¹ Doc. 283 is signed by William Freitas but the name of "Cindy Freitas" is noted on the front page above the caption. For purposes of Doc. 283, William Freitas is considered to be its proponent.

Lindsey Camara’s Motion to Reconsider Minute Order 19 (Doc. 291) was filed on September 28, 2016 (“Camara Motion”). On or about September 29, 2016, the Temple of Lono Motion for Reconsideration (“Lono Motion 2”) was filed (Doc. 293).

In addition to the four Motions, the following submissions were considered:

Doc. #	Filed	Party	Title
284	26-Sep-16*	C Freitas	Motion to Amend Doc 281 Minute Order No. 19 *Received on 9/25/16
292	28-Sep-16	W Freitas	William Freitas Motion to (sic) Joinder in Support of Joseph Kualii Lindsey Camara's Motion to Reconsider Minute Order 19. Doc 281
301	3-Oct-16	TIO	TMT International Observatory, LLC's Memorandum in Opposition to Temple of Lono Motion for Reconsideration Filed September 28, 2016
302	3-Oct-16	UHH	The University of Hawai'i at Hilo's Joinder to TMT International Observatory, LLC's Opposition to Temple of Lono Motion for Reconsideration Filed September 28, 2016 [Doc-293]
303	3-Oct-16	UHH	The University of Hawai'i at Hilo's Opposition to Joseph K. L. Camara's Motion to Reconsider Minute Order 19, Filed September 28, 2016 [Doc. 192] (sic); Exhibit "1"; Declaration of Counsel

At its core, Minute Order No. 19 (Doc. 281) sets forth the issues for this contested case hearing. It is an Order Granting Perpetuating Unique Educational Opportunities, Inc.’s Motion to Set Issues (Doc. 99). The motion and related submissions were argued at a hearing on August 29, 2016. “After considering the Motion, all related written and oral submissions from counsels and/or parties, and the entire record, the Hearing Officer requested that PUEO² counsel, Lincoln Ashida, Esq., submit a proposed minute order granting the Motion, no later than September 9,

² Perpetuating Unique Educational Opportunities, Inc.’s (“PUEO”).

2016. The Hearing Officer also established a deadline for responses to the proposal, September 19, 2016.” Min. Order 19 at page 3. Minute Order 19 is the product of that process.

The Freitas Motion seeks “correction” of Minute Order No. 19 but the basis is not stated. (Doc. 283) It is unclear why Freitas believes reconsideration is in order.

In Lono Motion 1, the Temple of Lono “argues that the Minute Order’s failure to provide reasoned explanations for the exclusion of issues, other than the issues discussed on page 5 of DOC-281, violates the Due Process rights of the Temple and all other parties filing proposed issues that were excluded without explanation.” Doc. 286 at page 3. Lono additionally contends that “[t]he time to file motions for reconsideration should be extended to a reasonable period after the Hearing Officer provides the reasoned explanation for the exclusion of any issue proposed by a party.” Doc. 286 at page 4. In Lono Motion 2, the Temple of Lono objects to the issues that were determined **not** to be addressed in the contested case hearing. Doc. 293 at page 2.

Camara moves for reconsideration because he disagrees with the decisions in Minute Order 19. “I must reiterate that no acceptable reasoning has been given as to why these issues will not be considered in this Contested Case Hearing. I have invested considerable time and effort into this case, and it does not sit well with me that the issues I want to be heard by the court may be deemed irrelevant.” Doc. 291 at page 3. Specifically, Camara believes that issues such as “**DESECRATION** as defined by HRS 711-1107” should be included. Doc. 291 at page 3. Camara further asserts a number of specific claims that he believes support reconsideration: (1) the minute order appears to have given PUEO the authority to set the issues in this contested case; (2) it lacks satisfactory explanations as to why Camara’s issues will not be allowed; (3) Camara and his witnesses have wasted their time preparing for issues that are disallowed; (4)

Camara will have to spend considerable time and effort preparing anew; and (5) the minute order excludes issues that are relevant. Doc. 291 at pp. 1-3.

TMT International Observatories, LLC, (“TIO”) puts forth two reasons that the Temple of Lono motions should be denied. First, the Temple of Lono fails to present any “new information not previously available.” Doc. 301 at page 2. Second, the Temple of Lono fails to establish “substantial injustice.” Doc. 301 at page 3.

In addition to joining TIO’s opposition to the Temple of Lono motions to reconsider, UHH opposes Camara’s motion to reconsider because it: (1) fails to present any new information that was not previously available, and (2) fails to demonstrate that substantial injustice would result from Minute Order 19.

The legal standard for reconsideration of motions is longstanding and clear. “Any Motion for Reconsideration shall not be used to reargue the motion or set out positions of a purely repetitious nature or to present factual or legal grounds that could or should have been presented at the original hearing. “ AMFAC, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114 (1992). **Cited**, Minute Order 19 at page 5. Furthermore, as stated in UHH’s opposition: “The Hawai`i Supreme Court has expressed its concern for the abuse of motions for reconsideration that merely ask a court to rehear matters of a purely repetitive nature which ‘necessarily result in delay and wasted effort by court and counsel.’ *Gossinger v. Ass’n of Apt. Owners of the Regency of Ala Wai*, 73 Haw. 412, 835 P.2d 627, 634 (1992); *see also K.M. Young & Assoc., Inc. V. Cieslik*, 4 Haw.App. 657, 675 P.2d 793, 801 (1983).” Doc. 303 at pp. 8-9.

None of the Motions present any new information that was not available prior to the issuance of Minute Order 19. The arguments set out are rearguments of previously asserted

positions, propositions with no reliable factual and/or legal grounds, and/or claims of a repetitive nature. There are no sound reasons to grant the Motions on the basis of substantial injustice.

Based upon the Motion, all related submissions from counsels and/or parties, all applicable law, the entire record having been considered by the Hearing Officer,

IT IS HEREBY ORDERED that the Motions are DENIED.

Motion to Reconsider. A party, who believes it appropriate, may file a motion to reconsider using the procedure set out herein. Any Motion for Reconsideration shall not be used to reargue the motion or set out positions of a purely repetitious nature or to present factual or legal grounds that could or should have been presented at the original hearing. AMFAC, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114 (1992).

The deadline for submission of any **motion** to reconsider this minute order is no later than **5 business days** after the date this Minute Order is filed in the Documents Library. Any **responses to motions to reconsider**, shall be submitted no later than **10 business days** after the order is filed in the Documents Library; essentially 5 business days after the deadline for motions to reconsider.

Any Motion to Reconsider shall be considered a non-hearing motion unless otherwise designated by the Hearing Officer.

DATED: Honolulu, Hawai`i, May 29, 2017.



Judge Rika 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 No. 54**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by email (when indicated) on May 30, 2017 and by regular mail on May 31, 2017:

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