

387	17-Oct-16	Kahea	Kahea: The Environmental Alliance's Joinder in Temple of Lono's Motion to Strike for Failure to Serve or Extension of Time and Rescheduling of Hearing Filed October 12, 2016; Declaration of Dexter Kaiama; Exhibits "A-B"
395	19-Oct-16	TIO	TMT International Observatory, LLC's Memorandum in Opposition to Kahea: The Environmental Alliance's Joinder in Temple of Lono's Motion to Strike for Failure to Serve or Extension of Time and Rescheduling of Hearing Filed October 12, 2016; Declaration of Ross T. Shinyama; Exhibits 1-6

Basically, the Temple of Lono seeks to strike TMT International Observatory, LLC's ("TIO") pleadings for TIO's alleged failure to serve copies of said pleadings on some of the parties to this contested case hearing by the deadline set by the Hearing Officer, October 11, 2016. The pleadings include Opening Statement, witness and exhibit lists, exhibits and written direct testimonies. Doc. 364 at pp.2-4. The Temple of Lono filed the Motion to Strike (Doc. 364) on October 12, 2016. On October 13, 2016 at 5:16 p.m. (Doc. 367), in a Temple of Lono Supplement to Strike, the Temple of Lono claimed that service of the pleadings had not yet been effected. On October 13, 2016 at 8:07 p.m., the Temple of Lono filed a Second Supplement to Strike reasserting its claim that TIO had still not served its pleadings on the Temple.

KAHEA joins the Temple of Lono's motion, alleging that it's new counsels, Dexter Kaiama, Esq. and Yuklin Aluli, Esq., also had not received service of the pleadings by the October 11, 2016 deadline. KAHEA acknowledges receiving an email from Michael Cain of the OCCL, on October 12, 2016, advising that TIO's documents were online with a link to the Documents library. KAHEA believes the aforesaid "circumstances" support the Temple of Lono's Motion to Strike or, in the alternative, that an extension of the contested case hearing and submission deadlines would be in order. Doc. 387, Declaration of Dexter Kaiama.

In its memorandum in opposition to the Temple of Lono motions, TIO responds that it did indeed file its pleadings on October 11, 2016, between 3:48 p.m. and 3:49 p.m. TIO affirms that it served copies of the pleadings upon all parties to the proceedings at 4:56 p.m. by a link. TIO asserts that on the same day, Michael Cain of OCCL accessed the pleadings via the link and uploaded the pleadings to the Documents Library. Doc. 374 at pp. 2-3.

With regard to service of TIO's pleadings to all parties and counsels, TIO's lawyer, Ross Shinyama, Esq., proclaims that his law firm's staff "provided a link to each of the parties in this proceeding, which allowed those parties to download the pleadings" via email. Doc. 374 at page 2. TIO argues that Mr. Cain's receipt of the pleadings via the link, evidences that service of the pleadings to all parties on October 11, 2016 had been successful. Doc. 374 at page 2.

The Temple of Lono "received an email from Frances M. Soares, Secretary to Michael C. Bird, Esquire & Summer H. Kaiawe Esquire, in the law firm of Watanabe Ing LLP, counsel for Telescope Astronomical Observatory LLC ("TIO")" on October 11, 2016, at 4:26 p.m. Doc. 364 at page 1. "The email had no contents other than the identifying information of the sender and a disclaimer." Doc. 364 at page 2. TIO admits that an email was sent "inadvertently to all parties in this proceeding" but that it was completely unrelated to this case; it "did not contain any information or any indication that its purpose was service of the pleadings on the parties." Doc. 374 at page 3. Mr. Shinyama declared that on October 13, 2016, upon learning of the Temple's complaint that it had not been served, he offered to re-send the same email and link to counsel for the Temple.

Insofar as KAHEA's joinder is concerned, TIO responds: "...the Notice of Appearance of Co-Counsel for those attorneys was not filed until October 11, 2016 and received by counsel for TIO until October 12, 2016, the day after TIO's pre-hearing documents were filed.

Consequently, it is disingenuous for KAHEA to argue that service should have been made on counsel who were not yet of record in this proceeding, especially where KAHEA's existing counsel, Richard Naiwieha Wurdeman, and KAHEA's representative, Bianca Esaki, were served." Doc. 395 at page 3.

TIO asserts that service of the pleadings was effected. However, assuming *arguendo* that the Temple of Lono and KAHEA did not receive service on October 11, 2016, under these circumstances, there was no prejudice to the Temple of Lono or KAHEA because they had access to the DLNR website (Documents Library) on October 11, 2016 where the pleadings had been uploaded. The facts do not warrant striking TIO's pleadings or extensions of time.

Based upon the Motion and Joinder, 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 Motion is 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 this 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, June 2, 2017.

A handwritten signature in black ink, appearing to be 'Riki May Amano', written over a horizontal line.

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

BLNR Contested Case HA-16-02
Document title: **Minute Order 58**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by email (when indicated) on June 2, 2017 and by regular mail on June 5, 2017:

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