



532	3/22/2017	Flores-Case	Flores-Case Ohana's Joinder to Mauna Kea Anaina Hou's Motion Requesting Time to Respond to Exhibits Objections and Related Matters; Flores-Case Ohana's Motion in Opposition to University of Hawaii at Hilo's Opposition to Motions to Admit Exhibits and Written Direct Testimonies (Doc 514) and to TMT International Observatory, LLC's Memorandum in Opposition to Motions to Admit Exhibits and Written Direct Testimonies (Doc 511); Memorandum in Support
535	3/22/2017	W Freitas	William Freitas Motion to Joinder Mauna Kea Anaina Hou Requesting Time to Respond to Exhibit Objections and Related Matters; Memorandum in Support
538	3/22/2017	Ching	Clarence Kukauakahi Ching's Motion for Joinder of 1) Mauna Kea Anaina Hou Motion Requesting Time to Respond to Exhibit Objections and Related Matters and 2) Temple of Lono's Joinder to Mauna Kea Anaina Hou Motion Requesting Time to Respond to Exhibit Objections and Related Matters
539	3/22/2017	Kihoi	Mehana Kihoi's Motion for Joinder of 1) Mauna Kea Anaina Hou Motion Requesting Time to Respond to Exhibit Objections and Related Matters and 2) Temple of Lono's Joinder to Mauna Kea Anaina Hou Motion Requesting Time to Respond to Exhibit Objections and Related Matters
540	3/22/2017	Kakalia	Tiffnie Kakalia's Motion for Joinder of 1) Mauna Kea Anaina Hou Motion Requesting Time to Respond to Exhibit Objections and Related Matters and 2) Temple of Lono's Joinder to Mauna Kea Anaina Hou Motion Requesting Time to Respond to Exhibit Objections and Related Matters
541	3/23/2017	KAHEA	KAHEA: The Environmental Alliance's Joinder in Mauna Kea Anaina Hou's Motion Requesting Time to Respond to Exhibit Objections and Related Matters, Filed March 21, 2017 and in Support of Joinders Filed by Temple of Lono, Deborah J. Ward, Harry Fergerstrom and Kalikolehua Kanaele Filed on Either March 21 or 22, 2017
545	3/23/2017	Ward	Deborah J Ward Joinder to Mauna Kea Anaina Hou Motion Requesting Time to Respond to Exhibit Objections

The Motion and Joinders seek to give movants an opportunity to file responses to objections made by UHH and TIO to exhibits moved into evidence. The reasons are summarized in KAHEA's

Joinder:

1. Given the volume of general objections and specific objections, HO Amano should allow substantial time for parties to file their responses;
2. The objections filed lack specificity or basis and, therefore, are unduly burdensome on the sponsoring party/parties;
3. To preclude the filing of responses, to exhibit objections, gives the objecting parties free reign to interpose baseless objections;
4. UH Hilo and TMT/TIO, are unilaterally altering the process set out by the Hearings Office [sic], and reserving the right to later object to evidence, that should have already been admitted into evidence, gives UH Hilo and TMT/TIO a second (and unfair) chance to object to the admission of evidence. This unilateral altering prevents petitioners from having any assurances in the exhibits (and wdt) they can rely on and cite in the preparation and submission of their proposed Findings of Facts, Conclusions of Law and Order. Under these circumstances, the due process rights of petitioners will be unduly prejudiced.

Doc. 541 at page 3.

Movants and/or Joiners contend that the Hearing Officer affirmed that all exhibits would be received in evidence and that UHH and TIO objections were unexpected. Movants and/or Joiners also request that further argument on the issue of admissibility of exhibits should be allowed in a "public hearing" (e.g. Doc. 522 at page 13, Doc. 526 at page 11) and additional objections be allowed after the transcripts are available (e.g. Doc. 540 at page 1).

Initially, it should be noted that the Motion and all Joinders were submitted before Minute Order 44 (Documentary Evidence) was filed on April 20, 2017. Minute Order 44 reflects the decisions of the Hearing Officer on all offered exhibits and includes a process for reconsideration and opposition (to reconsideration), of the Minute Order. The opportunity for responses to evidentiary objections is afforded through that process.

The deadline to file Motions for Reconsideration of Minute Order 44 (Documentary Evidence) was April 27, 2017; the deadline for oppositions thereto was May 4, 2017. Minute Order 51 (Amending Minute Order No. 44 and Granting In Part/Denying In Part Reconsideration of Minute Order No. 44). Doc. 647 at page 1. Copies of transcripts were available to the parties, on or about April 18, 2017. Minute Order No. 43 (Doc. No. 552) at page 1. Transcripts were available to all parties during the period of reconsideration of Minute Order 44 (Documentary Evidence), the time period in which parties could respond to the evidentiary decisions of the Hearing Officer.

There should be no misunderstanding about whether or not exhibits would be automatically accepted into evidence. The Hearing Officer was very clear about the process:

All right. So, let's deal with the exhibits first. I want to repeat that the way I'm asking that the exhibits be moved into evidence is by written motion. It should say, Deborah Ward Motion to Move Into Evidence, and lay out whatever exhibits you want. The deadline for that is March 9<sup>th</sup>. So if you have things coming up today or yesterday or last week and didn't have the time to move it into the document library so that it could be uploaded, do that before March 9<sup>th</sup>. Because then on March 9<sup>th</sup>, you're going to move everything that is in the document library for you into evidence. After that we're not going to take any more uploading.

A week later, March 16<sup>th</sup>, you may file if you wish, objections, responses, replies, joinders to the motions that were made. So if you have an objection to B-12, you may file an objection saying that we object to whoever is offering B-12, and here's the reason why.

Tr. Vol. 44, 3-2-2017, 287:20-288:16.

All parties were told that objections to motions to move exhibits into evidence would be part of the process of determining evidence. It is contradictory to the assertion that all exhibits would be accepted without objections.

Ultimately, the Hearing Officer determined the process for consideration of evidence. UHH's and TIO's reservation of rights to further object to evidence does not represent a change or alteration of the process, by the Hearing Officer.

Movant's demand for a public hearing does not cite to any legal authority for such a request. There is no basis or good cause reason to have a public hearing on this issue.

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 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 13, 2017.



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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 Orders 74-82**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by email (when indicated) on June 13, 2017 and by regular mail on June 13, 2017:

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