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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

Contested Case Hearing Re Conservation
District Use Application (CDUA) HA-3568 for
the Thirty Meter Telescope at the Mauna Kea
Science Reserve, Ka'oho Mauka, Hāmakua,
Hawai'i, TMK (3) 4-4-015:009

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Case No. BLNR-CC-16-002

THE UNIVERSITY OF HAWAI'I AT
HILO AND TMT INTERNATIONAL
OBSERVATORY, LLC'S JOINT
RESPONSE TO TEMPLE OF LONO'S
PROPOSED DECISIONS AND ORDERS
INCLUDING FINDINGS OF FACT AND

CONCLUSIONS OF LAW FILED MAY 23, 2017 [DOC. 651], SUPPLEMENT A TO PROPOSED DECISIONS AND ORDERS INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW FILED MAY 29, 2017 [DOC. 655], AND SUPPLEMENT B TO PROPOSED DECISION AND ORDERS INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW, DATED JUNE 10, 2017; APPENDICES A-B; CERTIFICATE OF SERVICE

THE UNIVERSITY OF HAWAI‘I AT HILO AND TMT INTERNATIONAL OBSERVATORY, LLC’S JOINT RESPONSE TO TEMPLE OF LONO’S PROPOSED DECISIONS AND ORDERS INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW FILED MAY 23, 2017 [DOC. 651], SUPPLEMENT A TO PROPOSED DECISIONS AND ORDERS INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW FILED MAY 29, 2017 [DOC. 655], AND SUPPLEMENT B TO PROPOSED DECISION AND ORDERS INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW DATED JUNE 10, 2017

The UNIVERSITY OF HAWAI‘I AT HILO (“UH Hilo”) and TMT INTERNATIONAL OBSERVATORY, LLC (“TIO”), through their respective counsel, jointly submit this Response (“Response”) to the Temple of Lono’s (“Temple”): (1) Proposed Decisions and Orders Including Findings of Fact and Conclusions of Law, filed May 23, 2017; (2) Supplement A to Proposed Decisions And Orders Including Findings of Fact and Conclusions of Law, filed May 29, 2017 (“Supplement A”); and (3) Supplement B to Proposed Decision and Orders Including Findings of Fact and Conclusions of Law, dated June 10, 2017 (“Supplement B”, collectively all three filings are referred to herein as the “Temple’s Proposed FOF/COL”).

I. STANDARD OF REVIEW FOR REVERSAL OR MODIFICATION OF ADMINISTRATIVE FINDINGS, CONCLUSIONS, DECISIONS, OR ORDERS

To prevent judicial reversal or modification of administrative findings of fact under § 91-14(g), Hawaii Revised Statutes (“HRS”), the Board of Land and Natural Resources (“BLNR”) should, upon review of the record, reverse or modify findings that are “[c]learly

erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]” *In re Gray Line Hawaii Ltd.*, 93 Hawai‘i 45, 53, 995 P.2d 776, 784 (2000). A finding of fact is “clearly erroneous when: (1) the record lacks substantial evidence to support the finding or determination, or (2) despite substantial evidence to support the finding or determination, the [BLNR] is left with the definite and firm conviction that a mistake has been made.” *Kienker v. Bauer*, 110 Hawai‘i 97, 105, 129 P.3d 1125, 1133 (2006) (citations omitted).

Similarly, conclusions of law should be reversed or modified where the BLNR finds they are in violation of constitutional or statutory provisions, in excess of the statutory authority or jurisdiction of the Commission, or affected by other error of law. *Id.*

II. DISCUSSION

A. The Temple’s Last-Minute Attempt to Supplement its Proposed FOF and COL Should Be Stricken

Minute Order 43 is unambiguous. The deadline for the parties to submit their respective proposed findings of fact, conclusions of law and decision and order was May 30, 2017. Parties could file responses to those submittals no later than June 13, 2017. The Hearing Officer rebuffed the Temple’s unfounded challenges to the deadlines set forth in Minute Order 43. Minute Order No. 50 [Doc. 646]. Nonetheless, the Temple is undeterred in its attempts to undermine the Hearing Officer’s authority. On Saturday, June 10, 2017, without seeking leave, the Temple served on the parties its Supplement B to its proposed FOF and COL.¹ The Temple’s eleventh hour filing is clearly past the deadline for the submission of proposed FOF and COL. More importantly, as is the case with the overwhelming majority of the Temple’s Proposed FOF/COL, Supplement B is completely irrelevant to the merits of the CDUA. Moreover, the

¹ Given that Monday, June 12, 2017 is a state holiday, the effective filing date of Supplement B to the Temple’s Proposed FOF/COL is Tuesday, June 13, 2017—*the same day the parties’ responses are due*. See HAR § § 13-1-13.1.

Temple is simply reasserting the same arguments previously presented—and rejected—for the umpteenth time. For all of these reasons, Supplement B should be stricken as untimely and procedurally improper.

B. Responses to the Temple Proposed FOF and COL

UH Hilo and TIO object to each of the FOF and COL in the Temple's Proposed FOF/COL, to the extent that they are irrelevant, inapplicable, immaterial, mischaracterize the evidence, misstate or misrepresent the record, rely on evidence that is not credible, biased, or incomplete, and/or not supported by the evidence. UH Hilo and TIO also object to each of the Temple's FOF and COL to the extent they assert alleged "findings" that are beyond the scope of issues set forth in Minute Order No. 19. UH Hilo and TIO further object to the Temple's "findings" and "conclusions of law" that simply rehash previously-raised arguments that have already been rejected by the Hearing Officer and/or BLNR in minute orders or otherwise.

Appendix A contains general objections to the Temple's Proposed FOF/COL, which UH Hilo and TIO hereby incorporate by reference into their response to each of the Temple's FOF and COL, to the extent applicable. In addition to the general objections in Appendix A, UH Hilo and TIO have prepared a table of specific responses and objections to the Temple's Proposed FOF/COL, which is attached hereto as Appendix B. Citations to the evidence in the record provided herein are not intended to be exhaustive or comprehensive, but demonstrate evidentiary support for UH Hilo and TIO's responses and objections. Appendix B includes UH Hilo and TIO's joint responses to Supplement B solely to preserve their objections for the record and should not be construed as a waiver of any of its arguments and objections to Supplement B.

The UH Hilo and TIO further object to the Temple's Proposed FOF/COL to the extent they seek to challenge the FEIS for the TMT Project. This proceeding is not an EIS challenge under HRS Chapter 343. The Temple's ability to make such a challenge expired long ago and it

cannot reopen the FEIS approval process through improper arguments of sufficiency under the statutes and rules governing the EIS process in this separate contested case proceeding. This proceeding is entirely governed by the applicable constitutional law and the Conservation District rules that are genuinely at issue here.

The FOF/COL and page numbers referenced herein follow those as provided in the Temple's Proposed FOF/COL. For clarity, the prefix "Supp A-" refers to FOF/COL as provided in the Supplement A; prefix "Supp B-" refers to FOF/COL as provided in the Supplement B.. References to the UH Hilo and TIO's Joint [Proposed] Findings of Fact, Conclusions of Law, and Decision and Order on May 30, 2017 [Doc. 671] ("UH-TIO FOF/COL") are denoted by the prefixes "UH-TIO FOF" and "UH-TIO COL" for the numbered FOF and COL, respectively, in the UH-TIO FOF/COL.

Acronyms and defined terms used herein are defined in the Index of Select Defined Terms, which was filed as part of the jointly-submitted UH-TIO FOF/COL.

C. Responses to the Temple's Proposed Decision and Order

The Temple's proposed Decision and Order is not supported by the record. As set forth in the UH-TIO FOF/COL, substantial evidence has been adduced to show that the CDUA satisfies the eight criteria, as set forth in Hawai'i Administrative Rule ("HAR") § 13-5-30(c). The record also shows that the TMT Project is consistent with UH Hilo's and the BLNR's obligations under the public trust doctrine; *Ka Pa 'akai*; and Article XI, section I; and Article XII, section 7 of the Hawai'i Constitution.

Ultimately, the Temple is categorically opposed to the construction of TMT regardless of whether or not the TMT Project satisfies the eight criteria. No location on the mountain, and no combination of mitigation measures, will make the TMT Project acceptable to the Temple. That

position of religious or cultural intolerance is not supported by the law and demonstrates an inherent bias that permeates its entire pleading.

III. CONCLUSION

Since the Temple's Proposed FOF/COL do not appropriately address whether the CDUA satisfies the eight criteria set forth in HAR § 13-5-30(c) or the issues set forth in Minute Order No. 19, but instead focuses on arguments it previously raised that have already been considered and rejected, and for the reasons set forth herein and in the UH Hilo Pre-Hearing Statement, TIO's Pre-Hearing Statement, the UH-TIO FOF/COL, the testimony of the UH Hilo's and TIO's witnesses, the examination of the Petitioners' and Opposing Intervenor's witnesses, and in UH Hilo's and TIO's other filings, both UH Hilo and TIO respectfully jointly request that the Hearing Officer adopt the UH-TIO FOF/COL, and reject the Temple's Proposed FOF/COL.

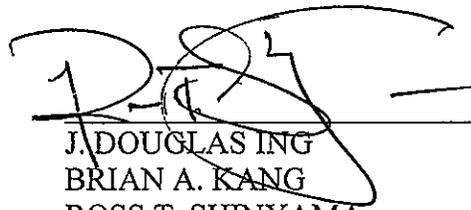
UH Hilo and TIO further request that the Temple's eleventh hour Supplement B be stricken as untimely.

DATED: Honolulu, Hawai'i, June 13, 2017.



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APPENDIX A

Appendix A

General Responses to Petitioners'/Opposing Intervenor's Proposed Findings of Fact ("FOF") and Conclusions of Law ("COL")	
Citation does not support the proposition.	The citation offered by Petitioners/Opposing Intervenor's does not support the proposed FOF or COL.
Estoppel/Improper Reconsideration	The proposed FOF or COL or a portion thereof is improper to the extent it is barred by estoppel or waiver, or seeks reconsideration of the Hearing Officer's or the BLNR's prior ruling,
Inaccurate/False	The proposed FOF or COL or a portion thereof is inaccurate or false.
Incomplete.	The proposed FOF or COL is materially incomplete.
Irrelevant/Inapplicable.	The information in the proposed FOF or COL is irrelevant or inapplicable in this contested case proceeding. <u>See</u> Minute Order No. 19 [Doc. No. 281].
Lack of Jurisdiction	The proposed FOF or COL exceeds the scope of the Hearing Officer's jurisdiction and/or delegated authority
Mischaracterization.	The proposed FOF or COL mischaracterizes legal authority or the contents of the record.
Misleading. Partial quotation.	The proposed FOF or COL contains a partial quote from legal authority or document in the record, and the incompleteness of the quotation is likely to mislead the reader.
Misleading. Presented out of context.	The proposed FOF or COL presents law or information in the record out of context and/or in a way that is likely to mislead the reader.
Misrepresentation	The proposed FOF or COL affirmatively misrepresents legal authority or the contents of the record.
Not credible.	The proposed FOF or COL is not credible based on the totality of the evidence contained in the record and/or the demonstrated biases of the witness whose testimony is cited in support of the proposed FOF or COL.

APPENDIX A

<p>Not in dispute.</p>	<p>Either (1) the proposed FOF or COL is not at issue in this proceeding, or (2) standing alone, the proposed FOF or COL is not objectionable. The designation of any individual proposed FOF or COL as “not in dispute” does not and should not be construed as an admission of said FOF or COL or a concession that said FOF or COL should be incorporated into the final FOFs and COLs. It also does not and should not be construed as assent to any inferences suggested or that may be suggested by Petitioners/Opposing Intervenors from, e.g., their misleading grouping or ordering of otherwise unrelated facts.</p>
<p>Not in evidence.</p>	<p>The proposed FOF or COL asserts “facts” and/or cites documents that are not in evidence.</p>
<p>Unsupported/Unsubstantiated</p>	<p>The proposed FOF or COL is not supported by information in the record or was not substantiated by the Petitioners/Opposing Intervenors through the contested case process.</p>

APPENDIX B

Appendix B

Summary Table of Responses to the Temple's Proposed FOF/COL

FOF/ COL #	Page	FOF/COL	Response
1.	4	A central question in this proceeding is the respect and legal protection due the traditional Hawaiian faith.	Inaccurate/False Unsupported/Unsubstantiated Estoppel/Improper Reconsideration See Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 (setting issues in this proceeding)
2.	4	The Applicant argued that the traditional Hawaiian faith should not be an issue in this proceeding at all because it would be a diversion. The Temple will try to use this proceeding to galvanize a religious movement. Indeed, the Temple states that religion will be an essential part of this proceeding: "[I]ssues related to Traditional Hawaiian Faith are going to be an essential part of the contested case" [DOC-135] Temple Mot. Intervene Mem. Supp. at 2 (emphasis added) The Hearing Officer should not allow such diversions from the stated criteria to obtain a permit. DOC-135 (The University of Hawaii at Hilo's opposition to Temple of Lono's motion for partial summary judgment [Doc. 78]) at 15 (emphasis in original).	Mischaracterization Inaccurate/False UH Hilo's Opp. to Temple's Mot. for Summ. J. speaks for itself.
3.	4	The Final Environmental Impact Statement (FEIS) prepared by the Applicant has a list of applicable statutes, rules, regulations, and requirements that the Applicant considered relevant to this project. Exhibit R-3 (Final Environmental Impact Statement, Volume 1 in Section 3.1) at pages 3-4 and 3-5.	Mischaracterization. The list in the FEIS specifically states "including (but not limited to)."
4.	4	The FEIS list does not include HRS § 711-1107, the Hawai'i statute that makes desecration of a sacred site a criminal offense.	Irrelevant/Inapplicable There is no credible evidence of

<p>desecration. UH-TIO COL 395-407.</p> <p>Lack of Jurisdiction Estoppel/Improper Reconsideration See Temple's Mot. Summ. J. (Desecration) [Doc. 264]; Minute Order No. 53 [Doc. 654]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p>		
<p>Unsubstantiated Inaccurate/False Irrelevant/Inapplicable Estoppel/Improper Reconsideration See Temple's Mot. Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]; UH Hilo's Opp. to the Temple's Mot. Summ. J. (Disqualification), filed Sept. 17, 2016 at 7 [Doc. 263].</p>	<p>5. That omission speaks volumes about the Applicant's unwillingness to acknowledge the traditional Hawaiian faith and the implications of such a denial for the application.</p>	
<p>There is no credible evidence of desecration. UH-TIO COL 395-407.</p> <p>Irrelevant/Inapplicable Lack Jurisdiction Estoppel/Improper Reconsideration See Minute Order No. 53 [Doc. 654]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]; see <i>also</i> UH Hilo's Opp. to the Temple's Mot. for Summ. J. (Disqualification), filed Sept. 17, 2016 at 7 [Doc. 263].</p>	<p>6. The Temple argued that the proper application of this statute required the dismissal of the application for a permit to build the Thirty Meter Telescope (TMT). DOC-264 [Temple of Lono motion for summary judgment (desecration)]; DOC-516 (Temple of Lono motion to Board of Land and Natural Resources to dismiss HA-3568)</p>	

		<p>There is no credible evidence of desecration. UH-TIO COL 395-407.</p> <p>Inaccurate/False. See Minute Order 53 [Doc. 654].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA See Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p>
7.	<p>The Hearing Officer never ruled on the first motion.</p>	<p>Inaccurate/False. See Minute Order 53 [Doc. 654].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA See Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p>
8.	<p>The Board never ruled on the second motion.</p>	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA See Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p>
9.	<p>The Temple of Lono will address more comprehensively the issues related to the spiritual impact of the TMT later in this filing.</p>	<p>Not credible</p>
10.	<p>In 2011, the Board of Land and Natural Resources granted the permit sought by the University of Hawai‘i at Hilo (Applicant), only to have that decision vacated by the Hawai‘i Supreme Court on due process grounds. <i>Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res.</i>, 136 Hawai‘i 376, 363 P.3d 224 (2015).</p>	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA, but otherwise not in dispute</p>
11.	<p>The flaw in that first proceeding was that the BLNR voted to grant the permit application before holding the contested case hearing. <i>Ibid.</i> at 239 (“In sum, BLNR put the cart before the horse when it approved the</p>	<p>Not in Dispute as to the remand of the case due to approval of the permit before the hearing was conducted.</p>

		<p>permit before the contested case hearing was held. Once the permit was granted, Appellants were denied the most basic element of procedural due process—an opportunity to be heard at a meaningful time and in a meaningful manner. Our Constitution demands more.”)</p>	
12.	5	<p>While the agency did not commit the same “cart before the horse” premature approval error regarding the scheduling of a second contested case, the impact of that initial due process violation irrevocably tainted this second contested case.</p>	<p>Unsupported/Unsubstantiated Inaccurate/False Not in Evidence</p>
13.	5	<p>In response to the Supreme Court ruling and subsequent remand, the Board of Land and Natural Resources selected a new hearing officer, who then began this new contested case.</p>	<p>Not in Dispute</p>
14.	5	<p>Yet the Supreme Court recognizes that [a]s well-intentioned as the hearing officer may be, he or she knows BLNR’s position on the permit before the first witness is sworn in. See <i>Murchison</i>, 349 U.S. at 136, 75 S.Ct. 623 (explaining that the “stringent rule [to avoid the appearance of prejudice] may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties”).</p>	<p>Misleading. Presented out of context. Misleading. Partial quotation. Citation does not support the Temple’s allegation of a “taint.”</p>
15.	6	<p><i>Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res.</i>, 136 Hawai’i 376, 363 P.3d 224, 239 (2015) (emphasis added).</p> <p>The agency cannot un-ring the bell. The new hearing officer knows that the BLNR approved the permit earlier. The hearing officer knows that the approval came before the contested case was held. See e.g. Tr. 8/29/17 at 52:8-10 (“I am aware that the supreme court set [sic] this case back for this contested case hearing because of a failure to follow process”)</p>	<p>Citation does not support the proposition that “[t]he agency cannot un-ring the bell.” Unsupported/unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p>
16.	6	<p>That earlier process on the part of the BLNR demonstrated a powerful agency commitment to granting the application for a permit of which the new hearing officer is completely aware.</p>	<p>Unsupported/unsubstantiated Mischaracterization Inaccurate/False</p>

<p>17.</p>	<p>6</p>	<p>The influence on the objectivity of the hearing officer of concern in the first proceeding remains in the second proceeding.</p>	<p>Not credible Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Unsupported/unsubstantiated Inaccurate/False Not credible Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 46 [Doc. 595]; Minute Order No. 17 [Doc. 245]; Minute Order No. 9 [Doc. 63]; Minute Order No. 4 [Doc. 14]</p>
<p>18.</p>	<p>6</p>	<p>If there is any evidence that the required objectivity is not present, the entire proceeding is called into question. Indeed, if there exists any reasonable doubt about the adjudicator’s impartiality at the outset of a case, provision of the most elaborate procedural safeguards will not avail to create [an] appearance of justice.” <i>Sussex</i>, 71 Haw. at 108, 784 P.2d at 870 (quoting M. Redish & L. Marshall, <i>Adjudicatory Independence and the Values of Procedural Due Process</i>, 95 Yale L.J. 455, 483-84 (1986)); see <i>Sifagaloa</i>, 74 Haw. at 190, 840 P.2d at 371 (same); see also <i>Cinderella</i>, 425 F.2d at 590 (disapproving of circumstances “which give the appearance that [a decisionmaker] has already prejudged the case and that the ultimate determination of the merits will move in predestined grooves”). It is abundantly clear that “[f]ew situations more severely threaten trust in the judicial process than the perception that a litigant never had a chance” due to “some identifiable potential bias.” Redish & Marshall, <i>Adjudicatory Independence</i>, 95 Yale L.J. at 483 (emphasis in original); see <i>Williams-Yulee v.</i></p>	<p>Inaccurate/False Misrepresentation Unsupported/Unsubstantiated Citations and quotations do not support the proposition.</p>

	<p><i>Florida Bar</i>, <u>U.S. ___</u>, 135 S.Ct. 1656, 1666, 191 L.Ed.2d 570 (2015) (stating that “public perception of judicial integrity” is a governmental interest of “the highest order”) (quotations omitted).</p> <p><i>Mauna Kea Anaina Hou</i>, <u>supra</u>. at 238.</p>	
19.	<p>A similar concern about “identifiable procedural bias” appears in the legal counsel for the Hearing Officer and the Board in this proceeding. The same counsel represented the Board in defending the initial decision to grant the permit. See DOC-95 (Petitioners’ Motion to Disqualify BLNR’s and Hearing Officer’s Counsel), DOC-130 (Petitioners’ supplemental arguments on motion to disqualify BLNR’s and Hearing Officer’s counsel), DOC-188 (Wurdeman correspondence addressed to Hearing Officer Judge (Ret.) Riki May Amano and BLNR Chair Suzanne Case re: Hearing on Petitioners’ motion to disqualify BLNR’s and Hearing Officer’s counsel, DOC-389 (Minute Order 38, Order denying motion to disqualify BLNR’s and Hearing Officer’s counsel).</p>	<p>Unsupported/Unsubstantiated Citations do not support proposition Inaccurate/False Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 389; see <i>generally</i> UH Hilo’s Memo. in Opp. to Petitioners’ Mot. to Disqualify BLNR’s & Hearing Officer’s Counsel [Doc. 138]</p>
20.	<p>Having vigorously advocated for the granting of the permit initially, the ability of such counsel to be impartial and objective in this proceeding is questionable. If BLNR had been at all sensitive to the seriousness of the initial violation of due process, the agency would have brought in counsel other than the prior counsel on this case to advise the Hearing Officer. To be even more demonstrative of rectitude, the agency would have hired private counsel and not relied upon the Attorney General’s office where prior counsel work.</p>	<p>Unsupported/Unsubstantiated Inaccurate/False Not credible Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 38 [Doc. 389]; see <i>generally</i> UH Hilo’s Memo. in Opp. to Petitioners’ Mot. to Disqualify BLNR’s & Hearing Officer’s Counsel [Doc. 138]</p>
21.	<p>The initial Petitioners and the Applicant requested the Board select a new Hearing Officer, to replace the one the Board selected earlier, based on evidence of possible bias. Minute Order No. 9 (Order denying Petitioners’ motion for reconsideration of Minute Order No. 4, Filed on</p>	<p>Misleading. Presented out of context. Mischaracterization Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p>

		May 6, 2016 and/or Motion to Strike Selection Process and to Disqualify Various Members and Hearing Officer) at 8-9.	
22.	7	The Board denied that request. <i>Ibid.</i> at 9-12.	Not in Dispute
23.	7	A third basis for questioning the objectivity of this proceeding is the fact that the Master Lease between BLNR and the Applicant expires in 2033.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA UH Hilo and TIO do not dispute that the General Lease expires in 2033. UH-TIO FOF 113.
24.	7	If there is no new Master Lease, there will be no basis for a sublease agreement between the Applicant and the TMT Telescope Project. If such a sublease has been signed, the sublease will be void without a new Master Lease.	Unsupported/Unsubstantiated Inaccurate/False Not in evidence Not credible Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA
25.	7	There is no question that, if the TMT Project knew today that the BLNR was not going to approve a new Master Lease, the TMT Project would move to the Canary Islands. There would be no point in building a telescope with an expected useful life of at least fifty years, if the lease for the land on which to build will expire sixteen years from now.	Unsupported/Unsubstantiated Inaccurate/False. <i>See</i> UH-TIO FOF 208, 331. Not in evidence Not credible Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA
26.	7	Yet BLNR is proceeding with consideration of the TMT Project permit application prior to determining whether a new Master Lease will be approved. That means that the entire TMT application process is either speculative or based on some secret agreement to approve a new Master Lease.	Unsupported/Unsubstantiated Inaccurate/False Not in evidence Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA
27.	7	If the application process is merely a speculative endeavor that will be abandoned, if a new Master Lease is not approved prior to the initiation of construction, then there was and is a due process violation in requiring parties opposed to the TMT Project to go through an extensive	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA

		contested case process for a project that may never be built, even if the application is approved.	
28.	7	This process is similar to the "cart before the horse" approach that led to vacating the first proceeding. The BLNR should have made the determination on whether a new Master Lease is going to be approved prior to considering applications for projects that would not be built or would be prematurely terminated, if a new Master Lease is not approved.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA
29.	8	The due process impact on those opposing the TMT Project is exacerbated by having to go through a second contested case hearing based on an earlier procedural error by the agency.	Unsupported/Unsubstantiated Inaccurate/False Mischaracterization Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA
30.	8	In addition, if the TMT application is approved and the TMT is constructed, the BLNR will have compromised its objectivity on the question of approving a new Master Lease. To subsequently fail to approve a new Master Lease would terminate the TMT Project prematurely, causing massive financial losses to the TMT Project. That loss will certainly be argued by those supporting adoption of a new Master Lease and be a source of significant inappropriate pressure on the BLNR to approve a new Master Lease.	Unsupported/Unsubstantiated Inaccurate/False Not in evidence Not credible Irrelevant/Inapplicable See UHH TIO FOF COL regarding lease issues
31.	8	The termination of the Master Lease without a replacement might even create legal liability for the State and that potential liability would provide another inappropriate argument for approval of a new Master Lease.	Unsupported/Unsubstantiated Inaccurate/False Not in evidence Irrelevant/Inapplicable See response to 30.
32.	8	Choosing to create these pressures on itself by approving the TMT application at issue in this proceeding prior to a decision on a new Master Lease would be evidence of bias and predetermination on the part of BLNR regarding a new Master Lease.	Unsupported/Unsubstantiated Inaccurate/False Not in evidence Irrelevant/Inapplicable See Response to 30.
33.	8	Alternatively, the fact that BLNR is processing the TMT CDUA is itself a signal to the TMT Project that BLNR intends to approve a new Master Lease. Why would BLNR spend its time and public resources	Unsupported/Unsubstantiated Citations and quotations do not support the proposition

	<p>processing the TMT application, if the agency did not intend to approve a new Master Lease? Why would the TMT Project be spending millions of dollars in pursuit of a permit that might be meaningless in a few years unless the TMT Project knew the new Master Lease was going to be approved? These questions give rise to at least the appearance that BLNR is not a fair and impartial tribunal.</p> <p>A "fair trial in a fair tribunal is a basic requirement of due process." <i>Sifagaloa v. Bd. of Trs. of Emps.' Ret. Sys.</i>, 74 Haw. 181, 189, 830 P.2d 367, 371 (1992)</p> <p>(quoting <i>In re Murchison</i>, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955))</p> <p><i>Mauna Kea Anaina Hou</i>, <u>supra</u>. at 228</p> <p>As this court noted in <i>Sifagaloa</i>:</p> <p>The Supreme Court teaches us . . . that justice can perform its high function in the best way [only if it satisfies] the 'appearance of justice.' For in a popular government, justice must not only be done but must manifestly be seen to be done</p> <p>74 Haw. at 189-90, 840 P.2d at 371 (quoting <i>Offutt v. United States</i>, 348 U.S. 11, 14, 75 S.Ct. 11, 99 L.Ed. 11 (1954), and <i>Murchison</i>, 349 U.S. at 136, 75 S.Ct. 623).</p> <p><i>Mauna Kea Anaina Hou</i>, <u>supra</u>. at 228-229.</p>	<p>Inaccurate/False Not in evidence Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA See response to 30.</p>
34.	<p>The agency's premature approval of the permit application, the Hearing Officer being advised by attorneys that supported and defended the initial due process violation, and the premature consideration of the permit application when the question of a new Master Lease has not yet been resolved are all evidence of a lack of concern for due process from the very beginning of this case and continuing into this second contested case. That lack of concern challenges the legitimacy of this proceeding.</p> <p>The extensive record of due process violations in the second contested case is a predictable result of the initial due process violations that could</p>	<p>Unsupported/Unsubstantiated Inaccurate/False Not in Evidence Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA See response to 30.</p>
35.		<p>Mischaracterization Not in Evidence</p>

		not be cured. See FoF 10-34.	Unsupported/Unsubstantiated Argumentative/Speculative Inaccurate/False Citation does not support the proposition Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA
36.	9	The Supreme Court vacated the permit granted during the initial process. <i>Mauna Kea Anaina Hou v. Board of Land and Natural Resources</i> , 136 Hawa’ii 376, 363 P.3d 224, 229 (2015).	Not in dispute as per case decision.
37.	9	The Supreme Court remanded this case to the Board so that “a contested case hearing <u>can be conducted</u> before the Board or a new hearing officer, or for other proceedings consistent with this opinion.” <i>Id.</i> (emphasis added).	Not in dispute as per case decision.
38.	9	The Board characterized the Supreme Court ruling as remanding the case so that the prior contested case hearing could be resumed. DOC-14 [Minute Order No. 4 (“The contested case resumed upon remand”)] at 4-5 (emphasis added); DOC- 63 {Minute Order 9 [“The Board has construed these (Supreme Court) instructions to mean that upon remand, the contested case that was initiated in 2011 <u>resumed....”}] at 5.</u>	Irrelevant/Inapplicable This FOF has no bearing on the merits of the CDUA. Citation does not support the proposition of a defective process. Minute Order No. 4 and 9 speaks for themselves. Estoppel/Improper Reconsideration ¹
39.	9	The Supreme Court said “a” contested case, not “the” contested case.	Misleading. Partial quotation. The Supreme Court ordered a remand “so that a contested case hearing can be conducted before the Board or a new hearing officer, or for other proceedings consistent with this opinion.” <i>Mauna</i>

¹ The Temple took full advantage of the mechanism for intervention to become a party in these proceedings and did not object to the process at that time. Nor did the Temple object to the inclusion of the original Petitioners as parties without a new petition for a contested case hearing. Therefore, the Temple has waived any objections to that process and is estopped from contending that the process for intervention was procedurally improper. See generally Temple’s Motion to Intervene (arguing that it was entitled to “mandatory intervention,” “discretionary intervention,” and “permissive intervention” under HAR § 13-1-31) [Doc. 50]; Minute Order No. 13 (granting the Temple’s Motion to Intervene) [Doc. 115]; see also Temple FOF 125, 127

			<p><i>Kea Anaina Hou</i>, 136 Hawai'i at 399, 363 P.3d at 247 (emphasis added). Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration. See <i>supra</i> at B-10, n.1.</p>
40.	9	<p>In that same sentence, the Board stated the “no chapter 92 public meeting was required to <u>start up</u> the contested case, including delegating the contested case to a hearing officer and authorizing the Chairperson to appoint one.” <i>Id.</i> (emphasis added).</p> <p>These statements are in conflict. Remanding the matter so that “a contested case hearing can be conducted” clearly identifies the proceeding as a new contested case. To call this proceeding “resumed” is clearly an error.[4]</p> <p>Footnote [4]: The record of the first contested case is part of the record of the second contested case. HAR § 13-1-32.4</p>	<p>Misleading. Partial quotation. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p>
41.	9		<p>Unsupported/Unsubstantiated Inaccurate/False Mischaracterization/Argumentative Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration as to footnote 4. See Minute Order No. 51 at 6-7 [Doc. 647]; see <i>also supra</i> at B-10, n.1.</p>
42.	9	<p>The confusion regarding the nature of this proceeding is reflected in the conflation of a petition for a contested case with a request to intervene.</p>	<p>Unsupported/Unsubstantiated Vague/Ambiguous/Argumentative Inaccurate/False Not in Evidence Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1.</p>
43.	9-10	<p>In Minute Order 7, the Hearing Officer referred to a “[d]eadline for intervention applications, motions or request.” DOC-44 at 2 (emphasis added). In Minute Order 8, the Hearing Officer again referred to a “[d]eadline for intervention applications, motions or request [sic].” DOC-49.</p>	<p>Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1. Citation does not support the proposition of a defective process. Minute Order No. 7 speaks for itself. Irrelevant/Inapplicable – This FOF has</p>

44.	10	<p>The parties to a contested case are first determined by a requirement to file a request for a contested case.</p> <p>§13-1-31 Parties.</p> <p>(a) Except as otherwise provided in section 13-1-31.1, parties to a contested case shall be determined within a reasonable time following the ten-day period following the board meeting, the presiding officer shall notify all persons and agencies, including the applicant or alleged violator, as the case may be, who <u>timely petitioned for the contested case hearing</u> of the date and time for a hearing to determine whether any or all of the persons and agencies seeking to participate in the contested case hearing are entitled to be parties in the contested case.</p>	<p>no bearing on the merits of the CDUA</p> <p>Estoppel/Improper Reconsideration</p> <p>The language of HAR § 13-1-31 speaks for itself and is not in dispute.</p> <p>Nonetheless, the FOF is improper because estoppel and/or waiver apply to the Temple's argument. See <i>supra</i> at B-10, n.1.</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p>
45.	10	<p>Under this rule, the parties to the contested case are limited to the people who “timely petitioned for the contested case hearing.” There is no rule that provides for “intervention” by new parties after the contested case is initiated.</p>	<p>Unsupported/Unsubstantiated</p> <p>Citation does not support proposition</p> <p>HAR § 13-1-31 does not support the proposition of a defective process.</p> <p>Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1.</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p>
46.	10	<p>If the remand of the case was treated as a resumption of the initial contested case, then there was no opportunity for new parties because the time to request a contested case had long since expired. The parties would be limited to those who were parties in the first contested case.</p>	<p>Unsupported/Unsubstantiated</p> <p>Inaccurate/False</p> <p>Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1.</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p>
47.	10	<p>If the remand of the case was treated as the opportunity for initiation of a new contested case, then the process had to provide some means for people to qualify as parties by requesting the contested case, such as a public hearing where such requests could be made. HAR § 13-1-29.</p>	<p>Unsupported/Unsubstantiated</p> <p>Citation does not support proposition</p> <p>HAR § 13-1-31 does not support the proposition of a defective process.</p>

			<p>Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1.</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p>Unsupported/Unsubstantiated</p> <p>Inaccurate/False</p> <p>Vague/Ambiguous/Argumentative</p> <p>Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1.</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p>Citation does not support the proposition of a defective process. Minute Order No. 7 speaks for itself.</p> <p>Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1.</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p>Citation does not support the proposition. Minute Order No. 13 speaks for itself.</p> <p>Unsupported/Unsubstantiated</p> <p>Inaccurate/False</p> <p>Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1.</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p>Misleading. Presented out of context.</p> <p>Inaccurate/False</p> <p>Citation does not support the proposition. Minute Order No. 13 speaks for itself.</p> <p>Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1.</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p>
48.	10-11	<p>This proceeding ended up as a hybrid recognized nowhere in the rules.</p>	
49.	11	<p>The parties from the first contested case became parties in the second contested case without any action on their part, as if the proceeding was a resumed proceeding. See Minute Order No. 7 (identifying the Applicant and the Petitioners from the first contested case as parties) at 1. DOC-44.</p>	
50.	11	<p>Then people were allowed to file motions to intervene and become parties, as if a motion to intervene in a case already initiated was the same as filing a request for a contested case prior to the initiation of the case. Minute Order 13 (Order on the hearing on admission or intervention as a party). DOC-115.</p>	
51.	11	<p>In her order granting intervention status to new parties, the Hearing Officer's legal discussion starts at HAR Section 13-1-31 (b) and (c), <i>ibid.</i> at 3, skipping over the prerequisite limiting such parties to those "who timely petitioned for the contested case hearing." 13-1-31 (a).</p>	

52.	11	The confusion resulting from the hybrid case approach to this proceeding caused difficulties for the parties. Tr. 7/17/16 at 14:18 – 15:16; <i>ibid.</i> 26:16 – 27:16; <i>ibid.</i> 36:10 – 38:20.	no bearing on the merits of the CDUA Inaccurate/False Citations do not support the proposition. There is no July 17, 2017 transcript. Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1. Vague/Ambiguous/Argumentative Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA
53.	11	The confusion may also have arisen from a political problem. The telescope promoters wanted to be a party to this contested case, rather than having the University (Applicant) represent their interests. DOC-002 (Motion to have TMT International Observatory, LLC [TIO] admitted as a party in the contested case hearing) filed April 8, 2016.	Inaccurate/False Not in Evidence Not Credible Unsupported/Unsubstantiated Citation does not support proposition Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA
54.	11	Given that TIO was not a party to the first proceeding and had not requested the second contested case, a new avenue for becoming a party had to be created.	Inaccurate/False Not in Evidence Not Credible Unsupported/Unsubstantiated Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA
55.	11	So the concept of “intervention” was introduced into the contested case process despite there being no rule allowing for such an action.	Inaccurate/False Not in Evidence Not Credible Unsupported/Unsubstantiated Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1. Vague/Ambiguous/Argumentative

56.	11	Once TIO was permitted to seek intervention status, the door opened for any other potential interveners in the contested case.	Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Inaccurate/False Unsupported/Unsubstantiated. Not all those seeking intervention were admitted as parties. See Minute Order No. 13 at 2 [Doc. 115]. Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA
57.	12	In the Final Environmental Impact Statement (FEIS), the Applicant lists the statutes, rules, regulations, and requirements that the Applicant considered applicable to this project. Exhibit R-3 (Final Environmental Impact Statement, Volume 1 in Section 3.1 at pages 3-4 and 3-5.)	Mischaracterization. The lists specifically state “including (but not limited to).”
58.	12	The list does not include HRS §711-1107 Desecration. <i>Id.</i>	Irrelevant/Inapplicable There is no credible evidence of desecration. UH-TIO COL 395-407. Lack of Jurisdiction Estoppel/Improper Reconsideration See Temple’s Mot. Summ. J. (Desecration) [Doc. 264]; Minute Order No. 53 [Doc. 654]; Temple’s Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.
59.	12	The Temple of Lono (“Temple”) is an intervener in this proceeding. DOC-115 (Minute Order No. 13: Order on the hearing on admission or intervention as a party; second prehearing conference) at 6.	Not in Dispute

60.	12	<p>The Temple sought intervener status, in part, to object to desecration of Mauna Kea:</p> <p>(1) Tahuna Frank Kamehameha Tamealoha Anuumealani Nobrigo is the Tahuna of the Temple of Lono. As such he has a unique understanding of the traditional Hawaiian faith and the application of that faith to the spiritual issues that are likely to be raised in this case.</p> <p>(2) Based on his unique, comprehensive, and relevant knowledge concerning the traditional faith of the Hawaiian Civilization, the Tahuna is entitled to mandatory intervention under HAR § 13-1-31(b)(2) <u>because desecration of Mauna a Wākea will directly affect the Temple of Lono, both as a violation of a sacred space and as an act in furtherance of a long-pursued campaign to suppress the traditional faith of the Hawaiian people.</u></p> <p>(3) Alternatively, the BLNR should grant discretionary intervention pursuant to HAR § 13-1-31(c) because the Temple has a substantial interest in this case and the Tahuna is the only person qualified to represent that interest.</p> <p>DOC-50 [Request of Temple of Lono to Intervene (Motion) at 2] (emphasis added). See also <u>Ibid.</u>, Declaration of Tahuna Frank Kamehameha Tamehaloha Anuumealani Nobrigo ¶ 12.</p>	<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>Vague/Ambiguous/Speculative There is no credible evidence of desecration. UH-TIO COL 395-407.</p> <p>UH-Hilo and TIO do not dispute that the Temple sought intervenor status and made certain assertions in its request for intervention.</p>
61.	12	<p>The Temple of Lono specifically raised the issue that the desecration statute called for dismissal of the CDUA. DOC-264.</p>	<p>Irrelevant/Inapplicable Lack Jurisdiction Estoppel/Improper Reconsideration See Minute Order No. 53 [Doc. 654]; see also Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>There is no credible evidence of desecration. UH-TIO COL 395-407.</p>

62.	13	<p>The Hearing Officer never addressed the desecration issue raised by the Temple's DOC-264. http://dlnr.hawaii.gov/mk/documents-library/passim</p>	<p>Inaccurate/False Citation does not support the proposition Irrelevant/Inapplicable Lack Jurisdiction Estoppel/Improper Reconsideration See Minute Order No. 53 [Doc. 654]; see also Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>There is no credible evidence of desecration. UH-TIO COL 395-407.</p>
63.	13	<p>The Temple raised the issue of the Hearing Officer [sic] failure to consider the desecration issue. DOC-324 (Temple of Lono motion to schedule pending motions), Memorandum at 1; DOC-371 (Temple of Lono: Unresolved matters) at 1.</p>	<p>Irrelevant/Inapplicable Lack Jurisdiction Estoppel/Improper Reconsideration See Minute Order No. 53 [Doc. 654]; see also Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>There is no credible evidence of desecration. UH-TIO COL 395-407.</p> <p>The Hearing Officer is not obligated to hear motions on issues that are not properly before her. See Minute Order No. 19 (setting the issues, which do not include desecration) [Doc. 281]; see also Minute Order No. 39 at 3 [Doc. 406] ("No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of</p>

		impropriety.”).
64.	13 The Hearing Officer did not respond to these Temple pleadings. http://dlnr.hawaii.gov/mk/documents-library/passim	Inaccurate/False Irrelevant/Inapplicable See Minute Order No. 57 [Doc. 674] Lack Jurisdiction Estoppel/Improper Reconsideration See Minute Order No. 53 [Doc. 654]; see <i>also</i> Temple’s Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394. The Hearing Officer is not obligated to hear motions that are not properly before her. See Minute Order No. 13 at 6 (setting July 18, 2016 pre-hearing motions deadline) [Doc. 115]; Minute Order. No. 19 (setting the issues, which do not include desecration) [Doc. 281]; see <i>also</i> Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”).
65.	13	Not in Dispute UHH filed an opposition to the Temple desecration motion. DOC-473.
66.	13	Not in Dispute The Temple moved to strike the UHH opposition. DOC-474.

67.	13	TMT/TIO joined UHH in opposition to the Temple's desecration motion. DOC-484.	Estoppel/Improper Reconsideration to the extent the phrase "TMT/TIO" is intended to imply that TIO is not a proper party. See Minute Order No. 65 [Doc. 688]; Minute Order No. 13 at 4 [Doc. 115]; UH-TIO COL 24.
68.	13	The Temple moved to strike TIO opposition. DOC-490	Not in Dispute
69.	13	The Hearing Officer did not take up the UHH and TIO oppositions. http://dlnr.hawaii.gov/mk/documents-library/ <i>passim</i>	Inaccurate/False Irrelevant/Inapplicable See Minute Order No. 53 [Doc. 654]
70.	13	The Hearing Officer did not take up the Temple's motions to strike. http://dlnr.hawaii.gov/mk/documents-library/ <i>passim</i>	Inaccurate/False Irrelevant/Inapplicable See Minute Order No. 53 [Doc. 654]
71.	13	On March 19, 2017, at the close of the evidentiary hearing, the Temple filed a motion to the Board seeking dismissal of the application based on the application seeking a permit to violate the desecration law. DOC-516.	UH Hilo and TIO do not dispute that the Temple filed the motion. UH Hilo and TIO deny all other allegations and inferences and incorporates the arguments set forth in UH Hilo's Opp. to the Temple's Mot. to BLNR to Dismiss HA-3568 [Doc. 549].
72.	13	The Board has not responded to the Temple's motion to dismiss.	Lack of Jurisdiction. UH-TIO COL 392-394. Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA
73.	13	Justices on the Hawai'i Supreme Court acknowledge Mauna Kea as a place of worship. In a concurring opinion, Justice Pollack wrote: Rising to a majestic 13,796 feet above sea level, Mauna	Mischaracterization Misleading. Presented out of context. Quoted text is from the concurrence and

	<p>Kea, the highest mountain peak in the Hawaiian Islands, is of profound importance in Hawaiian culture. The summit region is sacred to Native Hawaiians, and because of its spiritual qualities, traditional and customary cultural practices are exercised throughout the summit area.</p> <p><i>Mauna Kea Anaina Hou v. Board of Land and Natural Resources</i> (hereinafter “<i>Anaina Hou</i>”), 363 P.3d 224, 248 (2015) (Justice Pollack concurring) (emphasis added).</p>	<p>has no precedential effect.</p> <p>The fact that some native Hawaiians consider Mauna Kea to be sacred does not act as an absolute bar on development. Furthermore, the fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual. The Board must evaluate the proposed project under the eight criteria. See HAR § 13-5-30(c); see also UH-TIO COL 88-103, 355-382. The Temple’s FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).</p>
74.	<p>The Justice continued: Thus, the Board was informed of multiple traditional Hawaiian cultural practices exercised in the project area and was aware of the project’s potential adverse impact on the “spiritual nature of Mauna Kea” and the “cultural beliefs and practices of many.”</p> <p><i>Ibid</i> at 251 (2015) (emphasis added).</p>	<p>Misleading. Presented out of context. Quoted text is from the concurrence and has no precedential effect.</p> <p>In contrast to the Temple’s bare assertions, the UH-TIO Joint Proposed FOF/COL discuss the TMT Project’s potential impacts, including impacts on traditional and customary practices, in detail and with evidentiary support. See UH-TIO FOF 433-839.</p>

75.	14	<p>In its FEIS, the Applicant states:</p> <p>‘Āina mauna, or mountain lands, reflects a term used affectionately by elder Hawaiians to describe the upper regions of all mountain lands surrounding, and including, Maunakea. The area was frequented by native practitioners and contained a native and cultural landscape that provided among other things:</p> <ul style="list-style-type: none"> • Places to worship • Places to gather stones • Kanu iwi (places to bury human remains) • Kanu piko (places to bury umbilical cords) • Places to traverse, i.e. for those who were crossing from one region to another • Places to gather food, and catch birds • Sacred and safe area <p>Exhibit R-3 at 3-10.</p>	<p>Mischaracterization. See UH-TIO FOF 611-774.</p> <p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple’s desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281].</p> <p>There is no single native Hawaiian viewpoint or opinion on any subject. Practices and beliefs are personal and vary among practitioners. There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution. See UH-TIO FOF 641-642, 740, 744.</p> <p>There is no credible proof that any historic feature, traditional practice, or viewplane will be substantially or adversely impacted by construction at the TMT Project site. UH-TIO FOF 503-795.</p>
76.	14	<p>This extensive list of uses supports a finding that Mauna Kea is a place of worship. HRS §711-1107(1)(b).</p>	<p>Lack Jurisdiction Estoppel/Improper Reconsideration Irrelevant/Inapplicable See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394,</p>

<p>There is no credible evidence of desecration. UH-TIO COL 395-407</p> <p>There is no credible proof that any historic feature, traditional practice, or viewplane will be substantially or adversely impacted by construction at the TMT Project site. UH-TIO FOF 503-795.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p>		
<p>Lack Jurisdiction Estoppel/Improper Reconsideration See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394,</p> <p>There is no credible evidence of desecration. UH-TIO COL 395-407</p> <p>There are no known burials or funerary relics of any significance found or located within the TMT Project site and</p>	<p>The list also identifies uses that support a finding that Mauna Kea is a place of burial – <i>kamu iwi</i>. <u>Ibid.</u> (1)(b).</p>	<p>77.</p> <p>14</p>

<p>no proof of any related ongoing cultural or historical practice of any significance. Ex. C-11 (WDT Rechtman); Tr. 2/21/17 at 147:2-12; Tr. 12/05/16 at 217:18-23; 211:13-16; see UH-TIO FOF 627, 674-676, 703, 758.</p>		
<p>Lack Jurisdiction Irrelevant/Inapplicable Estoppel/Improper Reconsideration See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394, There is no credible evidence of desecration. UH-TIO COL 395-407 There is no single native Hawaiian viewpoint or opinion on any subject. Practices and beliefs are personal and vary among practitioners. See UH-TIO FOF 641-642, 740, 744.</p>	<p>The list also identifies uses that support a finding that Mauna Kea is an object of veneration -- <i>sacred and safe area</i>. <u>Ibid.</u> (1)(c).</p>	
<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]. Misleading. Presented out of context. See UH-TIO FOF 203.</p>	<p>The Cultural Impact Assessment (CIA), submitted by the Applicant, recommended that: Project proponents strongly consider no further development, including the TMT Observatory Project, and the TMT Mid-Level Facility at Hale Pōhaku, take place on Maunakea. Exhibit R-5 (CIA) at xiv.</p>	

80.	14	<p>The author of CIA recommendation testified that: There was a tremendous amount of historical data and public input that indicated the extreme sacredness of Maunakea, a place that may be the most sacred place in Hawaii, a place most sacred to Hawaiian people. Exhibit B.57 at 4.</p>	<p>Misrepresentation. Mr. Cruz's recommendation was included in the Preliminary Draft CIA, but not in the Draft CIA that was attached to the Draft EIS for the TMT Project.</p> <p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281].</p> <p>Not Credible. See UH-TIO FOF 203.</p> <p>Misrepresentation. Mr. Cruz's recommendation was included in the Preliminary Draft CIA, but not in the Draft CIA that was attached to the Draft EIS for the TMT Project. Mr. Cruz did not challenge the FEIS. UH-TIO FOF 203.</p> <p>Not Credible. See UH-TIO FOF 203.</p> <p>Mischaracterization. Mr. Cruz is only one of the authors of the <i>preliminary draft</i> of the CIA.</p> <p>Not Credible. See UH-TIO FOF 203</p> <p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this</p>
81.	15	<p>The author further explained: A "no further development" on Maunakea recommendation is strictly based on the data collected throughout the six-to-eight month period that the research was conducted. <u>Id.</u></p>	<p>Not Credible. See UH-TIO FOF 203.</p> <p>Mischaracterization. Mr. Cruz is only one of the authors of the <i>preliminary draft</i> of the CIA.</p> <p>Not Credible. See UH-TIO FOF 203</p>
82.	15	<p>The FEIS states: Maunakea bears much significance because it is believed that the points of highest altitude are sacred and open the</p>	<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this</p>

<p>gateways to Heaven. Six main zones can be found on the slopes of Maunakea; Kuahiwi, the core summit area, is the highest and most sacred. Tradition tells us that access to the summit was limited to high chiefs and priests.</p> <p>Exhibit R-3 at P-1.</p>	<p>FOF is intended to support the Temple's desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute.</p> <p>The fact that some native Hawaiians consider Mauna Kea to be sacred does not act as an absolute bar on development. The Board must evaluate the proposed project under the eight criteria. See HAR § 13-5-30(c); see also UH-TIO COL 88-103, 355-382. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).</p>	<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>There was no physical evidence that the TMT Project site was used for piko, iwi, placenta or otherwise storing artifacts. Tr. 12/20/16 at 145:9-12; Tr. 2/21/17 at</p>
<p>83.</p>	<p>15</p> <p>The burial of the piko or umbilical cord on the Mauna is part of the practice of ancestor worship.</p> <p>Other cultural practices on Maunakea include the deposition of a baby's piko, or umbilical cord. In an account by Puanani Kanaka'ole Kanahela, the symbolism of this practice was described as:</p> <p>... the part of the child that connected the child back to the past. Connected the child back to the mama. And the mama's piko is connected back to her mama and so on. So its takes it back, not only to the wā kahiko [ancient times], but all the way back to the Kumulipo</p>	<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>There was no physical evidence that the TMT Project site was used for piko, iwi, placenta or otherwise storing artifacts. Tr. 12/20/16 at 145:9-12; Tr. 2/21/17 at</p>

	<p>... So it's not only the piko, but it is the extension of the whole family that is taken and put up in a particular place, that again connects to the whole family line. And it not only gives mana or life to that piko and that child, but life again to the whole family.</p> <p><u>Ibid.</u> at P-2.</p>	<p>122:12-123:2, 147:2-12; UH-TIO FOF 562, 563, 671</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p> <p>There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p> <p>Native Hawaiians have many different forms and types of practices that are personal to each individual. See UH-TIO FOF 744; see also UH-TIO FOF 641-642, 740, 808.</p>
84.	<p>In the quote found in FoF 83, as is often the case, an expression of the traditional Hawaiian faith is treated as a cultural expression, rather than a spiritual expression.</p>	<p>Unsupported/Unsubstantiated Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>See Response to Proposed FOF 83.</p>

85.	15	<p>The burial of the piko is a highly important expression of the ancestor worship aspect of the faith, linking the baby to all the past generations, not a cultural practice, like eating musubi.</p>	<p>Unsupported/Unsubstantiated Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. See Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual</p> <p>There was no physical evidence that the TMT Project site was used for piko, iwi, placenta or otherwise storing artifacts. Tr. 12/20/16 at 145:9-12; Tr. 2/21/17 at 122:12-123:2, 147:2-12; UH-TIO FOF 562, 563, 671</p>
86.	15-16	<p>Mauna Kea itself is "known as 'ka piko o ka moku' meaning 'the navel of the island.'" <u>Ibid.</u> at P-1; see also <u>ibid.</u> at S-3 ["Maunakea is understood to be symbolic of the piko (umbilical cord) of the island-child Hawai'i that connects the land to the heavens; Mauna Kea is known as 'ka piko o ka moku' meaning the navel of the island."] The origins of Maunakea and its central place in Hawaiian genealogy and cultural geography are told in mele (poems, chants) and mo'olelo (stories, traditions). Native Hawaiian traditions state that ancestral akua</p>	<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. See Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p>

		<p>(gods, goddesses, deities) reside within the mountain summit area. Several natural features in the summit region are named for, or associated with, Hawaiian akua; these associations indicate the importance of Maunakea as a sacred landscape. Each part of the mountain contributes to the integrity of the overall cultural, historical, and spiritual setting.</p> <p><u>Ibid.</u> at 3-11 (emphasis added).</p>	<p>Exhibit R-3 speaks for itself, and UH Hilo and TIO do not dispute the FEIS contains the quoted language. UH Hilo and TIO deny all other inferences and allegations contained in this FOF.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute.</p> <p>The fact that some native Hawaiians consider Mauna Kea to be sacred does not act as an absolute bar on development. The Board must evaluate the proposed project under the eight criteria. <i>See</i> HAR § 13-5-30(c); <i>see also</i> UH-TIO COL 88-103, 355-382. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).</p>
87.	16	<p>The CIA gives an overview of Mauna Kea as follows: Maunakea is a sacred cultural landscape; symbolic of Wākea (the "Sky Father" to all Hawaiians), home of Poli'ahu, the goddess of snow and foe of Pele (the fire goddess), and of many other resident deities and supernatural deities (e.g. Līlīnoe, Kūkahau'ula, and Mo'oinanea), and the <i>piko</i> (umbilical cord) of the island-child Hawai'i which connects the lands to the heavens (Maly and Maly 2005:v); home of Waiau, the highest permanent lake in the Hawaiian Islands; location of the</p>	<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. <i>See</i> Minute Order No. 19 No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394. Exhibit R-5 speaks for itself, and UH Hilo and TIO do not dispute the CIA contains the quoted language. UH Hilo</p>

<p>highest and most extensive basalt quarry in all of Polynesia and perhaps the entire world; and numerous trails, <i>ahu</i> (stone markers), <i>heiau</i> (temple, place of worship) and cinder cone <i>pu'u</i> (hills).</p> <p>Exhibit R-5, CIA for the TMT Observatory and TMT Mid-Level Facility Project at iii.</p>	<p>and TIO deny all other inferences and allegations contained in this FOF.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute.</p> <p>The fact that some native Hawaiians consider Mauna Kea to be sacred does not act as an absolute bar on development. The Board must evaluate the proposed project under the eight criteria. <i>See HAR § 13-5-30(c); see also UH-TIO COL 88-103, 355-382.</i></p>
<p>88.</p>	<p>The Office of Hawaiian Affairs acknowledges the different perspectives on Maunkea as a spiritual, sacred space, home to "wau akua" (dwelling, place of the gods) and the place where the presence of numerous <i>ahu</i> and <i>iwi kūpuna</i> provide silent testimony that generations of Hawaiians have worshipped and buried loved ones at "the highest point possible to rest in peace."</p> <p><u>Ibid.</u> at x.</p> <p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. <i>See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</i></p> <p>The document speaks for itself and UH Hilo and TIO do not dispute the CIA contains the quoted language. UH Hilo and TIO deny all other inferences and allegations contained in this FOF.</p> <p>There are no known burials or funerary relics of any significance found or located within the TMT Project site and no proof of any related ongoing cultural</p>

<p>or historical practice of any significance. Ex. C-11 (WDT Rechtman); Tr. 2/21/17 at 147:2-12; Tr. 12/05/16 at 217:18-23; 211:13-16; see UH-TIO FOF 627, 674-676, 703, 758.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute.</p> <p>The fact that some native Hawaiians consider Mauna Kea to be sacred does not act as an absolute bar on development. The Board must evaluate the proposed project under the eight criteria. See HAR § 13-5-30(c); see also UH-TIO COL 88-103, 355-382. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).</p>			
<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394. The document speaks for itself and UH Hilo and TIO do not dispute the CIA contains the quoted language; nor do UH Hilo and TIO dispute that members of the</p>	<p>Interviews in the community confirmed these characterizations of the sacred Mauna.</p> <p>The results of cultural consultations indicate that there are major concerns (and several ancillary ones) regarding potential adverse impacts on cultural and natural resources and associated beliefs and practices as a result of the proposed development of the Thirty Meter Telescope, construction of the staging area for the TMT Observatory Project and the HELCO electrical transformer needed to supply electrical power to the TMT Observatory Project:</p> <ol style="list-style-type: none"> 1. All of the community members interviewed for this study stress that Maunakea is a sacred landscape and that 	<p>16-17</p>	<p>89.</p>

	<p>any future development activities on the mountain proceed with greater awareness of, and the utmost respect for Hawaiian culture, Hawaiians' spiritual connection to the mountain, and the sanctity of Maunakea.</p> <p>...</p> <p>3. Ten of the community members interviewed, and three of the respondents who provided brief commentary, explicitly stated their opposition to the proposed actions on Maunakea which is traditionally, and continues to be, one of the most sacred locations in all of Polynesia, not to mention Hawai'i. These participants voiced sadness, frustration, and negative feelings about the cumulative impacts of past and present developments on Maunakea. In the words of one participant, referring to the telescopes on the summit of Maunakea, "When is enough, enough?"</p> <p>R-5 at vi-vii (emphasis added).</p>	<p>community were interviewed and consulted during development of the TMT Project. See, e.g., UH-TIO FOF 210-237. UH Hilo and TIO deny all other inferences and allegations contained in this FOF.</p> <p>The fact that some native Hawaiians consider Mauna Kea to be sacred does not act as an absolute bar on development. The Board must evaluate the proposed project under the eight criteria. See HAR § 13-5-30(c); see also UH-TIO COL 88-103, 355-382. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c). The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).</p>
90.	17	<p>Lack Jurisdiction</p> <p>Estoppel/Improper Reconsideration</p> <p>See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>There is no credible evidence of desecration. UH-TIO COL 395-407.</p> <p>The fact that some native Hawaiians consider Mauna Kea to be sacred does not act as an absolute bar on</p>

91.		development. The Board must evaluate the proposed project under the eight criteria. See HAR § 13-5-30(c); see also UH-TIO COL 88-103, 355-382. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).
17	<p>The Applicant's Imiloa Astronomy Center website acknowledges Mauna Kea as a sacred site:</p> <p>The original name of Maunakea is <i>Mauna a Wakea</i>, or 'Mountain of Wakea.' In Hawaiian tradition <i>Wakea</i> (sometimes translated in English as 'Sky Father') is the progenitor of many of the Hawaiian Islands, and of the Hawaiian people. This mountain is his piko, or the place of connection where earth and sky meet and where the Hawaiian people connect to their origins in the cosmos.</p> <p>'Realm of the gods'</p> <p>As a sacred site, many of the physical features and environmental conditions of the mountain are associated with Hawaiian gods and goddesses. <i>Lilinoe</i>, <i>Poliahu</i>, and <i>Waiuu</i> are just a few of the deities associated with this place.</p> <p>The summit of Maunakea was considered a <i>wao akua</i>, or 'realm of the gods' and was therefore visited only rarely by humans."</p> <p>http://www.imiloahawaii.org/60/cultural-significance (emphasis added) cited <i>inter alia</i> DOC-264 at 3.</p>	<p>Not in Evidence</p> <p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute.</p> <p>The fact that some native Hawaiians consider Mauna Kea to be sacred does not act as an absolute bar on development. The Board must evaluate the proposed project under the eight criteria. See HAR § 13-5-30(c); see also UH-TIO COL 88-103, 355-382. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).</p>

92.	17	<p>Setting aside Mauna Kea as a sacred space for use as determined by Native Hawaiians has a precedent. The Legislature created the Kaho'olawe Island Reserve, which is defined as the entire island of Kaho'olawe and those waters and submerged lands seaward of the shoreline of Kaho'olawe island to a distance of approximately two miles.</p> <p>HAR § 13-261-3 (emphasis added).</p> <p>The legislation says that the Reserve is to be used solely and exclusively for the preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual, and subsistence purposes.</p>	<p>Citation does not support Proposition Irrelevant/Inapplicable Lack of Jurisdiction</p>
93.	18	<p>HAR Rules § 13-261-1 (emphasis added).</p> <p>Considering an entire geographical feature as sacred is not limited to indigenous religions. Mount Sinai, where Moses received the Ten Commandments, is considered a holy mountain by Christians, Jews, and Muslims. Exhibit T-2 at 2.</p>	<p>Irrelevant/Inapplicable</p>
94.	18	<p>The FEIS states: The subject of the presence of burials in the Maunakea summit region is a topic of considerable differences between the scientific, archaeological perspective, on the one hand, and the Native Hawaiian perspective on the other hand.</p> <p>R-3 at P 3-15.</p>	<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>There are no known burials or funerary relics of any significance found or located within the TMT Project site and no proof of any related ongoing cultural or historical practice of any significance.</p>

<p>Ex. C-11 (WDT Rechtman); Tr. 2/21/17 at 147:2-12; Tr. 12/05/16 at 217:18-23; 211:13-16; see UH-TIO FOF 627, 674-676, 703, 758.</p>		
<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>There are no known burials or funerary relics of any significance found or located within the TMT Project site and no proof of any related ongoing cultural or historical practice of any significance. Ex. C-11 (WDT Rechtman); Tr. 2/21/17 at 147:2-12; Tr. 12/05/16 at 217:18-23; 211:13-16; see UH-TIO FOF 627, 674-676, 703, 758.</p> <p>Witnesses were unable to identify the locations of burials they alleged were on or near the TMT Project site. See UH-TIO FOF 566-568.</p> <p>There is a burial treatment plan for the entire MKSR and Mauna Kea access corridor, including the TMT Project site. See UH-TIO FOF 570-571, 674.</p>	<p>Western scientists grant at least 29 burials or possible burial sites. <u>Ibid.</u> at 3-16.</p>	<p>95.</p> <p>18</p>

<p>A site is not considered a burial site based on the mere possibility that an inadvertent burial might be found at that location. UH-TIO FOF 675-676</p>		
<p>There are no known burials or funerary relics of any significance found or located within the TMT Project site and no proof of any related ongoing cultural or historical practice of any significance. Ex. C-11 (WDT Rechtman); Tr. 2/21/17 at 147:2-12; Tr. 12/05/16 at 217:18-23; 211:13-16; see UH-TIO FOF 627, 674-676, 703, 758.</p> <p>The fact that certain individuals may hold and/or express such religious or spiritual beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.</p> <p>Witnesses were unable to identify the locations of burials they alleged were on or near the TMT Project site. See UH-TIO FOF 566-568.</p> <p>There is a burial treatment plan for the entire MKSR and Mauna Kea access corridor, including the TMT Project site. See UH-TIO FOF 570-571, 674.</p> <p>A site is not considered a burial site</p>	<p>Native Hawaiians, based in part on documentary evidence, believe that there are or were many more sites. <u>Id.</u> See also <u>ibid.</u> at P-2.</p>	<p>18</p>
<p>96.</p>		

<p>based on the mere possibility that an inadvertent burial might be found at that location. UH-TIO FOF 675-676.</p>		
<p>There are no known burials or funerary relics of any significance found or located within the TMT Project site and no proof of any related ongoing cultural or historical practice of any significance. Ex. C-11 (WDT Rechtman); Tr. 2/21/17 at 147:2-12; Tr. 12/05/16 at 217:18-23; 211:13-16; see UH-TIO FOF 627, 674-676, 703, 758.</p> <p>Witnesses were unable to identify the locations of burials they alleged were on or near the TMT Project site. See UH-TIO FOF 566-568.</p> <p>There is a burial treatment plan for the entire MKSR and Mauna Kea access corridor, including the TMT Project site. See UH-TIO FOF 570-571, 674.</p> <p>A site is not considered a burial site based on the mere possibility that an inadvertent burial might be found at that location. UH-TIO FOF 675-676</p>	<p>There is also the concern that if burials have been going on for hundreds of years, there is every likelihood that the bones will have deteriorated and be undetectable.</p>	
<p>Unsupported/Unsubstantiated</p> <p>A site is not considered a burial site based on the mere possibility that an inadvertent burial might be found at that location. UH-TIO FOF 675-676.</p>	<p>Relying only on identified sites in making the determination of whether Mauna Kea is a burial ground is highly problematic.</p>	

99.		<p>There is a burial treatment plan for the entire MKSR and Mauna Kea access corridor, including the TMT Project site. See UH-TIO FOF 570-571, 674.</p>
18	<p>Intervener Fergerstrom filed the Written Direct Testimony of Michael Lee that contained the following:</p> <p>Our family has clocked into record on August 02, 2016 at SHPD [State Historic Preservation Division] a Burial Registration Form showing the exact location of my 13th great uncles a [Mō'i] of Maui's burial location of his [kā'ai] and another burial site on the proposed access road to the TMT site.</p> <p>I was taught our 'Ohana's Mo'olelo of my Keawe and Piilani bloodlines and how my 13th great uncle was taken to this isolated site and why.</p> <p>This genealogy and the site location of my family's information is restricted from the public access [pursuant to HRS Chapter 6E-43.5 (e)] confidential only to be seen by SHPD Burial experts and the Hawaii Island Burial Council.</p> <p>Exhibit D-1 at 3 (emphasis added).</p>	<p>Misleading; Presented out of context Not credible. Mr. Lee could not provide any specific location of the burial site. See UH-TIO FOF 567.</p> <p>There are no known burials or funerary relics of any significance found or located within the TMT Project site and no proof of any related ongoing cultural or historical practice of any significance. Ex. C-11 (WDT Rechtman); Tr. 2/21/17 at 147:2-12; Tr. 12/05/16 at 217:18-23; 211:13-16; see UH-TIO FOF 627, 674-676, 703, 758.</p>
100.	<p>The FEIS discussion on the subject of burials does not reach any definitive conclusions. <u>Ibid.</u> at P 3-15-16.</p>	<p>Inaccurate/False Misrepresentation. There are no known burials in the proposed 5 acre TMT project site. See Ex. A-3/R-3 at 3-28 ("The site of the Project is over one mile from the nearest known or possible burial identified during past archaeological studies. No specific sites have been documented to</p>

101.		In the Hawaiian civilization, wisdom resided in the Kupuna (the Elders). If the Kupuna say "Our family is up there," <u>id.</u> , that should settle the matter as to whether there are burials on the site.	be associated with burial blessing ceremonies within the northern plateau. As a result, the Project is not anticipated to have substantial adverse effects on any burial blessing practices occurring on Maunakea.") Unsupported/Unsubstantiated Citation does not support proposition
102.	19	From the non-Hawaiian perspective, i.e. for those who refuse to take the word of Hawaiian Kupuna regarding the burial ground, there is sufficient evidence to conclude that Mauna Kea has been used as and continues to be a burial ground.	Unsupported/Unsubstantiated There are no known burials or funerary relics of any significance found or located within the TMT Project site and no proof of any related ongoing cultural or historical practice of any significance. Ex. C-11 (WDT Rechtman); Tr. 2/21/17 at 147:2-12; Tr. 12/05/16 at 217:18-23; 211:13-16; see UH-TIO FOF 627, 674-676, 703, 758. The fact that certain individuals may hold and/or express such beliefs is not in dispute, but the legal impact of such beliefs is clearly in dispute. There is no reliable probative and substantial evidence that the substance of the belief is factual.
103.	19	Of particular importance is the location of one burial through the testimony of Mr. Michael Lee as being on the access road to the proposed site for the Thirty Meter Telescope. Exhibit D-1 at 3. That close proximity raises the broader issue that there are no metes and	Citation does not support proposition. Inaccurate/False Not credible. Mr. Lee could not provide any specific

<p>location of the alleged burial sites on or near the roadway. See UH-TIO FOF 567.</p> <p>Any inadvertent finds will be handled in accordance with the policies and procedures in the approved Burial Treatment Plan for the area.</p> <p>There are no known burials or funerary relics of any significance found or located within the TMT Project site and no proof of any related ongoing cultural or historical practice of any significance. Ex. C-11 (WDT Rechtman); Tr. 2/21/17 at 147:2-12; Tr. 12/05/16 at 217:18-23; 211:13-16; see UH-TIO FOF 627, 674-676, 703, 758.</p>	<p>bounds defining a "cemetery" on Mauna Kea that would allow a determination of which areas are part of the burial grounds and which are not. With at least one burial in close proximity to the site for the Thirty Meter Telescope, a reasonable assumption is that the site is within a burial ground.</p>	
<p>Speculative. Unsubstantiated</p> <p>Dr. Kahakalau acknowledged a plot of land is not considered a burial site just because there is the possibility that an inadvertent burial might be found in that location. Tr. 1/9/17 at 181:12-181:17.</p> <p>There is a burial treatment plan for the entire MKSR and Mauna Kea access corridor, including the TMT Project site. See UH-TIO FOF 570-571, 674.</p> <p>To the extent this FOF is intended to argue that the TMT Project site may, at some unspecified point in the future, be</p>	<p>Even if no burials had been identified in Area E, that did not mean Area E would not be used at some future time for burials.</p>	<p>104.</p> <p>19</p>

<p>used by unknown persons for a burial or placement of remains, there is no proof of any ongoing cultural or historic practices of any significance (including funerary practices) at the site. There is no evidence that the vicinity of the TMT Project site has been used for the contemporary practice of scattering cremation remains. UH-TIO FOF 627-628, 672.</p>			
<p>Unsubstantiated</p> <p>UH-Hilo did not make a determination that there are no burials within the TMT Project Site. Expert archaeologists have conducted extensive archaeological surveys on the TMT Project site. UH-TOT FOF 571.</p> <p>There is a burial treatment plan for the entire MKSR and Mauna Kea access corridor, including the TMT Project site. See UH-TIO FOF 570-571, 674.</p> <p>Misrepresentation. Mr. Lee could not provide any specific location of the alleged burial sites on or near the roadway. See UH-TIO FOF 567.</p> <p>There are no known burials or funerary relics of any significance found or located within the TMT Project site and no proof of any related ongoing cultural or historical practice of any significance.</p>	<p>Certainly the Applicant is not qualified to make that determination.</p>	<p>19</p>	<p>105.</p>
	<p>On the record, there is at least one burial identified on the access road to the Thirty Meter Telescope proposed site. The fact that others have not been detected does not mean that they are not present. Given the proximity of an identified burial to the proposed Thirty Meter Telescope site, the potential expansion of burials into the area of or within the site is a reasonable expectation, absent the construction of the telescope.</p>	<p>19</p>	<p>106.</p>

<p>Ex. C-11 (WDT Rechtman); Tr. 2/21/17 at 147:2-12; Tr. 12/05/16 at 217:18-23; 211:13-16; see UH-TIO FOF 627, 674-676, 703, 758.</p> <p>A site is not considered a burial site based on the mere possibility that an inadvertent burial might be found at that location. UH-TIO FOF 675-676.</p>			
<p>Inaccurate/False Lack Jurisdiction Estoppel/Improper Reconsideration See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>There is no credible evidence of desecration. UH-TIO COL 395-407</p>	<p>The evidence in the record is that Mauna Kea has been and continues to be a burial ground. That designation satisfies Section (1)(b) (place of burials) of the desecration statute.</p>	19	107.
<p>Lack Jurisdiction Estoppel/Improper Reconsideration See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>There is no credible evidence of desecration. UH-TIO COL 395-407</p>	<p>The desecration statute also refers to “[i]n a public place, any other object of veneration by a substantial segment of the public.” HRS § 711-1107(1)(c) (emphasis added).</p>	19	108.
<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple’s desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19</p>	<p>The FEIS, Volume 1 states: Some Native Hawaiian spiritual practitioners continue to view Maunakea as the first-born of the Wakea and Papa union and, thus, revered as a connection to all Native Hawaiian people and gods.</p>	19-20	109.

<p>[Doc. 281]; UH-TIO COL 392-394.</p> <p>The fact that some native Hawaiians consider Mauna Kea to be sacred does not act as an absolute bar on development. The Board must evaluate the proposed project under the eight criteria. <i>See</i> HAR § 13-5-30(c); <i>see also</i> UH-TIO COL 88-103, 355-382. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).</p>		
<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. <i>See</i> Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>The fact that some native Hawaiians consider Mauna Kea to be sacred does not act as an absolute bar on development. The Board must evaluate the proposed project under the eight criteria. <i>See</i> HAR § 13-5-30(c); <i>see also</i> UH-TIO COL 88-103, 355-382. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).</p>	<p>Exhibit R-3 at 3-13.</p>	<p>110.</p> <p>The FEIS, Volume 3 states: Numerous comments were received regarding cultural resources, and while the comments expressed a wide range of sentiments, all made it clear that Maunakea is a sacred place revered by many. Exhibit R-5 at B-01 (emphasis added).</p>
<p>Incomplete. Unsupported/Unsubstantiated Misrepresentation.</p>	<p>The extensive expressions of strong opposition to the Thirty Meter Telescope provide further support for a finding that Mauna Kea is an object of veneration. <u>See</u> {FoF #s}</p>	<p>111.</p> <p>20</p>

<p>See UH-TIO FOF 728, 740,762; Ex. I-1.</p> <p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this FOF is intended to support the Temple's desecration claims. See Minute Order No. 19 No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p>		
<p>Misleading. Presented out of context.</p> <p>The record shows that construction would not significantly impact traditional and cultural practice at the TMT Project site. See, e.g., UH-TIO FOF 681-682, 729-768; see also UH-TIO FOF 682-692 (mitigation measures)</p> <p>The mere fact that a project will require excavation does not automatically disqualify a project from approval. See UH-TIO FOF 480, 493, 911.</p>	<p>The construction of the Thirty Meter Telescope will involve short-term adverse construction impacts on Mauna Kea.</p> <p>Project construction will require the excavation of rock from the TMT Observatory site and along the Access Way.</p> <p>DOC-R-1, Appendix B at Page B-3.</p>	
<p>The mere fact that a project will require excavation does not automatically disqualify a project from approval. See UH-TIO FOF 480, 493, 911.</p>	<p>The construction impacts will include the following:</p> <p><u>Construction Noise.</u> Construction of the proposed facilities, particularly Observatory site and Access Way grading, will involve the use of heavy construction equipment, including that needed for excavation of relatively dense rock. It will also entail periodic operation of construction equipment on the concrete Batch Plant Staging Area site.</p>	

	<p>DOC-R-1 at Page 2-31.</p> <p>The foundation will extend below grade and will require considerable excavation to remove and significant material to backfill the voids.</p> <p>DOC-1 at Page 4-43</p> <p>Preliminary engineering plans indicate that the total volume of excavated material ("cut" material) will be 64,000 cubic yards.</p> <p>DOC-R-1, Appendix B at Page B-3.</p>		
114.	<p>The long-term impacts will include the following: The total dome height will be 184 feet above the finished grade, with an exterior radius of 108 feet.</p> <p>DOC-R-1 at Page 3-3.</p>	<p>The dome size of the TMT Observatory is not in dispute.</p> <p>TIO intends to restore the Project site upon decommissioning of the TMT Observatory. UH-TIO FOF 159, 375. The TIO Sublease requires TIO to remove its improvements—which would include the dome—and restore the site at the end of the TMT Observatory's useful life or if the General Lease is not renewed or extended. UH-TIO FOF 208.</p>	
115.	<p>In sum, the Thirty Meter Telescope will excavate a vast amount of material in order to prepare a foundation and then build an eighteen story building on that foundation.</p>	<p>The mere fact that a project will require excavation does not automatically disqualify a project from approval. See UH-TIO FOF 480, 493, 911.</p> <p>TIO intends to restore the Project site upon decommissioning of the TMT Observatory. UH-TIO FOF 159, 375. The TIO Sublease requires TIO to</p>	

<p>remove its improvements and restore the site at the end of the TMT Observatory's useful life or if the General Lease is not renewed or extended. UH-TIO FOF 208.</p>		
<p>Lack Jurisdiction Estoppel/Improper Reconsideration See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p>	<p>There is no question that this huge construction project will damage the pristine site where construction is proposed, satisfying that element of the desecration test. HRS § 711-1107(2).</p>	
<p>There is no credible evidence of criminal desecration as alleged, and clearly construction of buildings to house astronomical observatories is implicit within the subzone that permits this exact astronomy use in the proposed area. UH-TIO COL 395-407.</p>		
<p>Whether or not an area is pristine is not the standard for the evaluation of a CDUA. The University has shown that it considered all eight criteria applicable to its CDUA, and that the TMT Project complies with the purpose of the Conservation District, as set forth in the applicable authorities. See UH-TIO FOF 381-382; <i>see generally</i> UH-TIO COL 128-385. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).</p> <p>Moreover, there are already 11 observatories on Mauna Kea within the</p>		

<p>Astronomy Precinct. Witnesses for the Petitioners and Opposing Intervenor admitted that the summit area is already substantially developed for astronomy use. UH-TIO FOF 859-866, 985; UH-TIO COL 344.</p>		
<p>UH Hilo and TIO do not dispute that Ex. L23 is a document titled "Assessment of the Risks for Siting the Thirty Meter Telescope on Mauna Kea," prepared by the Keystone Center, but objects to the Temple's characterization of the document.</p>	<p>Before the TMT Corporation selected Mauna a Wākea as the site for the Thirty Meter Telescope, a telescope funder commissioned an independent risk assessment from the Keystone Center. Exhibit L23 ("Assessment of the Risks for Siting the Thirty Meter Telescope on Mauna Kea").</p>	21
<p>Document speaks for itself. Misleading; Presented out of context Document speaks for itself Irrelevant/Inapplicable – Prior predictions of possible community views and reactions regarding the TMT Project have no bearing on the merits of the CDUA and to the extent the Temple claims this is relevant to its desecration claim, there is no credible evidence of desecration and the BLNR has no jurisdiction to consider the claim. UH-TIO COL 395-407. The fact that certain individuals oppose the TMT Project, without more, is insufficient reason for denial of a CDUP. See UH-TIO COL 360-382.</p>	<p>The Keystone Center report predicted strong adverse community reactions to the selection of Mauna Kea as the site for the telescope. A Sour History and Heavy Baggage. Unfailingly, almost every interviewee we spoke with, even those who are great proponents of placing observatories on Mauna Kea, acknowledge a complex and, for many, a bad history on the mountain. Hawaiians, both Native and non-Native, speak of poor planning, bureaucratic bumbling, broken promises, technocratic arrogance, and a persistent failure to engage the Native Hawaiian community in meaningful and appropriate ways. Some of this has been reported in two legislative audits. While there are many fine individual efforts underway to rectify long-running problems, the situation remains contentious and confusing. Should TMT decide to pursue a Mauna Kea site, it will inherit the anger, fear, and great mistrust through previous telescope planning and siting failures and an</p>	21

<p>The Board must evaluate the proposed project under the eight criteria. See HAR § 13-5-30(c); see also UH-TIO COL 88-103, 355-382. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).</p>	<p>accumulated disbelief that any additional projects, especially a physically imposing one like the TMT, can be done properly.</p> <p><u>Ibid.</u> at 3-4.</p>	<p>119.</p>
<p>Misleading; Presented out of context Document speaks for itself</p> <p>Irrelevant/Inapplicable – Prior predictions of possible community views and reactions regarding the TMT Project have no bearing on the merits of the CDUA and to the extent the Temple claims this is relevant to its desecration claim, there is no credible evidence of desecration and the BLNR has no jurisdiction to consider the claim. UH-TIO COL 395-407.</p> <p>The fact that certain individuals oppose the TMT Project, without more, is insufficient reason for denial of a CDUP. See UH-TIO COL 360-382.</p> <p>The Board must evaluate the proposed project under the eight criteria. See HAR § 13-5-30(c); see also UH-TIO COL 88-103, 355-382. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).</p>	<p>The report is filled with the many challenges to be expected from the community, such as the following:</p> <ol style="list-style-type: none"> a. There is a long litany of perceived problems that includes poor master and management planning, placing telescopes on inappropriate sites, poor disposal of rubbish and waste, the failure to consult Native Hawaiians in management decisions, and inadequate access for cultural and spiritual practices. <u>Ibid.</u> at 4 (emphasis added). b. As well-intentioned as they are, we were told by many individuals that the [Institute for Astronomy] has failed in its interactions with non-university communities of interest. <u>Id.</u> (emphasis added) c. Sentiments against further telescope development are strong. <u>Ibid.</u> at 5. (emphasis added) d. To succeed at a Mauna Kea site, TMT must run a gauntlet that entails a number of potential challenges, not all of which are of TMT's making and some of which could be potential showstoppers if TMT's schedule and timing do not have great flexibility. <u>Id.</u> (emphasis added) e. The Science Reserve sits on ceded lands, another long-standing and highly contentious issue. <u>Ibid.</u> at 6. (emphasis added) f. [The Thirty Meter Telescope] will be physically imposing and visible from Waimea on the north side of the island if it is sited at or around test site 13 North. 	<p>21-22</p>

	<p><u>Ibid.</u> at 7. (emphasis added) Traditionally, EIS documents are a battleground for development projects and it would seem likely that TMT will be a magnet for litigation, especially if prior issues (CMP, lease, ceded land payments, visual issues) have not been meaningfully addressed and resolved. <u>Id.</u> (emphasis added) h. The PanSTARRS EIS, telescope issues on Haleakala, unsettled clean-up issues on Kaho'olawe, EIS concerns for the Superferry on Kauai and Maui, disputes over depleted uranium shells, and the realignment of Saddle Road on Hawaii Island may fuel environmental issues related to TMT. <u>Id.</u> (emphasis added) i. The history of poor or no consultations with Hawaiians, both Native and non-Native, was chronicled repeatedly in our conversations as a serious problem. None of this is TMT's fault, but all of it will be inherited. <u>Id.</u> (emphasis added) j. The long-running history of disputes on Mauna Kea has been disappointing for many who are deeply supportive of both Native Hawaiian culture and a solid Hawaii Island science industry. Moreover, possibilities for a successful reconciliation of the two are, for many, diminishing. "It is the wrong mountain at the wrong time by the wrong people," one interviewee told us. "It might have been alright 20 years ago, but not today. They've broken our hearts." <u>Id.</u> (emphasis added) k. "Letting the scientists lead has created a cultural disconnect of epic proportions." <u>Ibid.</u> at 8. (emphasis added)</p>		
120.	The Keystone Report did propose "Options for Consideration." <u>Ibid</u> at 9-13.	22	Not in Dispute as per exhibit.

121.	22	History has demonstrated that either the options proposed were not adopted or, if they were adopted, had little effect on public opposition.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA
122.	22-23	The outpouring of public opposition took many forms, including: a. disruption of the ground-breaking ceremony, Exhibit T-2 at 4; b. multiple confrontations between law enforcement and people objecting to the telescope to protect the Mauna, id.; DOC-135 (Declaration of Counsel at ¶3 and Exhibit 1 at 3 and Declaration of Lanny Alan Sinkin at 1-2; c. hundreds of people blocking access to the construction site by the construction company to protect the Mauna, id.; d. people subjecting themselves to being arrested, see T-2 at 4; and e. a petition opposing the project signed by 66,554 people. https://www.change.org/p/governor-david-y-ige-stop-tmt-construction-and-arrests-of-mauna-kea-protectors	Legal argument by the Temple's counsel is not evidence Not in evidence as to change.org petition The fact that certain individuals oppose the TMT Project, without more, is insufficient reason for denial of a CDUP. See UH-TIO COL 360-382. The record shows that the TMT Project satisfies the eight criteria under HAR § 13-5-30(c) or the BLNR's constitutional obligations. See generally, UH-TIO FOF 344-1014; UH-TIO COL 128-385. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).
123.	23	The public gatherings in opposition had a spiritual quality, with those participating calling themselves Protectors of the Mountain, not protestors. Exhibit T-2 at 4.	Mischaracterization. See UH-TIO FOF 728 Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA
124.	23	Temple of Lono (“Temple”) is an intervener in this proceeding. DOC-115 (Minute Order No. 13: Order on the hearing on admission or intervention as a party; second prehearing conference) at 6.	Not in Dispute
125.	23	The Temple sought intervener status on the following bases: (1) Tahuna Frank Kamehameha Tamealoha Anuumealani Nobriga is the Tahuna of the Temple of Lono. As such he has a unique understanding of the traditional Hawaiian faith and the application of that faith to the spiritual issues that are likely to be	Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA UH-Hilo and TIO do not dispute that the Temple sought intervener status and

		<p>raised in this case.</p> <p>(2) Based on his unique, comprehensive, and relevant knowledge concerning the traditional faith of the Hawaiian Civilization, the Tahuna is entitled to mandatory intervention under HAR § 13-1-31(b)(2) because desecration of Mauna a Wākea will directly affect the Temple of Lono, both as a violation of a sacred space and as an act in furtherance of a long-pursued campaign to suppress the traditional faith of the Hawaiian people.</p> <p>(3) Alternatively, the BLNR should grant discretionary intervention pursuant to HAR § 13-1-31(c) because the Temple has a substantial interest in this case and the Tahuna is the only person qualified to represent that interest.</p> <p>DOC-50 [Request of Temple of Lono to intervene (Motion) at 2].</p>	<p>made certain assertions in its motion seeking intervention.</p>
126.	24	<p>The Temple offered arguments and evidence in support of its motion to intervene. <u>Ibid.</u> (Memorandum and Exhibits thereto).</p>	<p>Irrelevant/inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p>UH-Hilo and TIO do not dispute that the Temple sought intervenor status and made certain assertions in its motion seeking intervention.</p> <p>Not in Dispute</p>
127.	24	<p>The Hearing Officer admitted the Temple as an intervenor. DOC-115 (Minute Order No. 13: Order on the hearing on admission or intervention as a party; second prehearing conference) at 4. <u>See also</u> DOC-074 (Statement of Representation)]; DOC-076 (Declaration of Frank Tamehameha Kamehaloha Anuumealani Nobriga re: Appointment of Lanny Alan Sinkin as an officer of the Temple of Lono).</p>	
128.	24	<p>On June 21, 2016, the Temple filed its Motion for Partial Summary Judgment. DOC-78 (Temple of Lono motion for partial summary judgment). The motion sought partial summary judgment on two factual issues: (1) the summit of Mauna Kea is held sacred by the traditional Hawaiian faith and (2) the traditional Hawaiian faith is still</p>	<p>UH-Hilo and TIO do not dispute that the Temple filed a Motion for Partial Summary Judgment on June 21, 2016 and made certain assertions therein. That motion was denied. <i>See</i> Minute Order</p>

129.	practiced. <u>Id.</u>	No. 23 [Doc. 346]. UH Hilo and TIO dispute the Temple's mischaracterization of its motion. See UH Hilo Opp. to Temple's Mot. for Partial Summ. J. [Doc. 135]. Not in Dispute	
130.	On August 1, 2016, the University of Hawai'i at Hilo (UHH), applicant for the conservation district use permit at issue in the proceeding below, ("Applicant") filed its opposition to the Temple's motion. DOC-135 [(The University of Hawaii at Hilo's opposition to Temple of Lono's motion for partial summary judgment (DOC-78)]. In this pleading, the University included a libelous and bigoted attack on the Temple of Lono. Ibid. at 14-15.	Inaccurate/False Misrepresentation Not Credible Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Citation does not support proposition Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609].	
131.	On August 3, 2016, the Temple filed a reply bringing the matter of the attack to the attention of the Hearing Officer and challenging the attack as an <i>ad hominem</i> attack with no factual basis. DOC-176 (Temple of Lono reply to the University of Hawaii at Hilo's opposition to Temple of Lono motion for partial summary judgment).	Inaccurate/False and Misrepresentation as to "attack" Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609].	
132.	On August 5, at a pre-hearing conference, the Hearing Officer provided an opportunity for oral argument on the Temple's motion for partial	Not in Dispute	

		summary judgment. Tr. 8/5/16 at 26:21 – 23.	
133.	24	The Temple brought up the issue of the attack. <u>Ibid.</u> at 27:25 – 29:20.	Inaccurate/False and Misrepresentation as to “attack.” Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration <i>See</i> Temple’s Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609].
134.	24	The Applicant objected to the Temple’s motion on procedural grounds and offered no response to the Temple’s challenge to the attack. <u>Ibid.</u> at 29:23 – 30-2.	Inaccurate/False and Misrepresentation as to “attack.” Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration <i>See</i> Temple’s Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609].
135.	24	The Hearing Officer orally denied the motion for partial summary judgment without mentioning the attack. <u>Ibid.</u> at 45:20 – 23.	Inaccurate/False and Misrepresentation as to “attack.” Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration <i>See</i> Temple’s Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609].
136.	24	Pursuant to a schedule set by the Hearing Officer, the time for pre-hearing motions expired on August 1. DOC-115 at 6.	Inaccurate/False. Pursuant to Minute Order No. 13, the deadline for pre-hearing motions was July 18, 2016. The deadline to file responses to pre-hearing motions was August 1, 2016. The briefing schedule did not allow for

137.	24	The Applicant filed its attack on August 1. DOC-135.	<p>replies or further briefing. [Doc. 115 at 6.]</p> <p>Inaccurate/False and Misrepresentation as to "attack."</p> <p>UH Hilo filed its Opposition to the Temple's Motion for Partial Summary Judgment on August 1, 2016. [Doc. 135].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609].</p> <p>Estoppel/Improper Reconsideration See Minute Order No. 33 [Doc. 356].</p>
138.	25	On August 8, 2016, the Temple filed its Motion to File Motion out of Time. DOC-179 (Temple of Lono motion to file motion out of time).	<p>Inaccurate/False and Misrepresentation as to "attack."</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. to File Mot. Out of Time [Doc. 179]; Minute Order No. 33 [Doc. 356]</p>
139.	25	The Temple sought permission of the Hearing Officer to file a motion out of time seeking to dismiss the application on the grounds that the attack demonstrated that the Applicant has a disqualifying animus towards the traditional Hawaiian faith. DOC-179, Exhibit 2 (Memorandum at 2-4, -10).	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration UH Hilo and TIO do not dispute that the Temple made certain arguments in its Motion to File Motion Out of Time, which were rejected by the Hearing</p>
140.	25	The Temple argued that the animus was disqualifying because the Applicant would be constitutionally required to protect that faith, should the permit application be granted. <u>Id.</u>	

			Officer. See Temple's Mot. to File Mot. Out of Time [Doc. 179]; Minute Order No. 33 [Doc. 356].
141.	25	Intervener Sleightholm filed a joinder to the Temple's motion. DOC-193 (Leina'ala Sleightholm joinder to Temple of Lono motion to file motion out of time).	Not in Dispute
142.	25	Intervener Sleightholm also filed a memorandum in support of the Temple's motion. DOC-235 (J. Leina'ala Sleightholm's Memorandum in Support of Temple of Lono Motion to File Motion Out of Time).	Not in Dispute
143.	25	Intervener Kila filed a memorandum in support of the Temple's motion. DOC-221 (Glen Kila memorandum in support of Temple of Lono motion to file motion out of time).	Not in Dispute
144.	25	The Applicant opposed the Temple's motion solely on timeliness grounds. DOC-194 (The University of Hawaii at Hilo Opposition to Temple of Lono's motion to file out of time).	Inaccurate/False Mischaracterization See, e.g., UH Hilo Opp. to Temple's Mot. to File Out of Time at 3 [Doc. 194]. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. to File Mot. Out of Time [Doc. 179]; Minute Order No. 33 [Doc. 356].
145.	25	The only other opposition was also solely on timeliness grounds. DOC-183 (TMT International Observatory LLC's objections to ... (2) Temple of Lono motion to file out of time).	Inaccurate/False Mischaracterization See, e.g., TIO's Objections to (1) Temple's Mot. for Recon.; (2) Temple's Mot. to File Mot. Out of Time; and (3) Camara's Joinder to Wurdeman's Mot. to Strike CDUA at 4 [Doc. 183]. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. to File Mot. Out of

146.	25	On August 29, 2016, the Temple's motion to file motion out of time came before the Hearing Officer. Tr. 8/29/16 19:10 – 24:25.	Time [Doc. 179]; Minute Order No. 33 [Doc. 356].
147.	25	In the hearing, the Applicant did not offer any defense of or explanation for the attack. <u>Ibid.</u> at 25:2 – 27:19.	Not in Dispute
148.	25	After hearing argument, the Hearing Officer orally denied the motion to file a motion out of time without mentioning the attack. <u>Ibid.</u> at 28:9 – 12.	Inaccurate/False and Misrepresentation as to "attack." Estoppel/Improper Reconsideration See Temple's Mot. to File Mot. Out of Time [Doc. 179]; Minute Order No. 33 [Doc. 356].
149.	25	On September 17, 2016, the Temple also filed its Motion to Recuse Hearing Officer. DOC-262 (Temple of Lono motion to recuse Hearing Officer).	Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Not in Dispute
150.	25	The Hearing Office[r] did not rule on the Motion to Recuse Hearing Officer until May 2, 2017. DOC-595 (Minute Order No. 46; related to Temple of Lono motion to recuse Hearing Officer). See also DOC-610 (Temple of Lono motion for reconsideration of Minute Order No. 46).	Not in Dispute UH Hilo and TIO do not dispute that the Hearing Officer issued a written order denying the Temple's untimely and procedurally improper Motion to Recuse Hearing Officer on May 2, 2017. See Minute Order No. 46 [Doc. 595].

151.		<p>The Hearing Officer is under no obligation to take up untimely motions. See Minute Order No. 13 (setting deadlines for prehearing motions) [Doc. 115].</p> <p>Estoppel/Improper Reconsideration See Temple's Mot. to Recuse Hearing Officer [Doc. 262]; Minute Order No. 46 [Doc. 595].</p> <p>Inaccurate/False and Misrepresentation as to "attack." See <i>generally</i> UH Hilo's Opp. to Temple's Mot. to Recuse Hearing Officer [Doc. 434].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. to Recuse Hearing Officer [Doc. 262]; Minute Order No. 46 [Doc. 595].</p> <p>Inaccurate/False and Misrepresentation as to "attack." Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration UH Hilo and TIO do not dispute that the Temple filed a motion for partial summary judgment on September 17, 2016, in which it asserted arguments that have been rejected by the Hearing</p>
152.	<p>The basis for recusal was primarily the refusal of the Hearing Officer to permit the Temple to even file a motion challenging the Applicant's attack as disqualifying. <i>Id.</i></p> <p>On September 17, 2016, the Temple filed its Motion for Summary Judgment (Disqualification) arguing that the Applicant's attack was an undisputed fact that disqualified the Applicant from receiving the permit. DOC-263 [Temple of Lono motion for summary judgment (disqualification)].</p>	

153.	26	<p>The Hearing Officer did not rule on the Motion for Summary Judgment (Disqualification) until May 4, 2017. DOC-609 [Minute Order No. 47; related to Temple of Lono Motion for Summary Judgment (Disqualification) (DOC-263)]; see also DOC-619 (Temple of Lono motion for reconsideration of Minute Order No. 47.)</p>	<p>Officer. See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]</p> <p>Not in Dispute</p> <p>UH Hilo and TIO do not dispute that the Hearing Officer issued a written order denying the Temple's untimely motion on May 4, 2017. See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]</p>
154.	26	<p>On September 17, 2016, the Temple also filed its proposed issues for the Hearing. DOC-265 (Temple of Lono proposed issues).</p>	<p>UH Hilo and TIO do not dispute that the Temple filed its <i>Proposed Issues</i> on September 17, 2016, in which it proposed issues to be considered in this contested hearing. In Minute Order No. 19, the Hearing Officer implicitly rejected the issues proposed by the Temple. See Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].</p>
155.	26	<p>The issues proposed by the Temple included a category titled "Character" and in that category included the following: "Has the Applicant demonstrated a hostility toward the Traditional Hawaiian Faith that disqualifies the Applicant from receiving the permit requested?" DOC-265, Exhibit "A" at 1.</p>	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration. See Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].</p>
156.	26	<p>On September 23, 2016, the Hearing Officer issued an order setting the issues for the hearing. DOC-281 (Minute Order 19: Order granting Perpetuating Unique Educational Opportunities, Inc.'s motion to set the issues)]. That order excluded the character disqualification issue the Temple sought to litigate. <i>Id. passim</i>.</p>	<p>Not in Dispute</p>
157.	26	<p>On September 26, 2016, the Temple filed its Motion for Reasoned Explanations and Extension of Time. DOC-286 (Temple of Lono motion for reasoned explanations and extension of time). That motion</p>	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration</p>

158.	26	sought explanations for the Hearing Officer's exclusion of many issues identified by the Temple as relevant and material to this case, including the character disqualification issue. <u>Id.</u>	See Temple's Mot. for Reasoned Explanations and Extension of Time [Doc. 286]; Minute Order No. 54 [Doc. 656].
	26	On October 3, 2016, the Temple again raised the issue of an absence of reasoned explanations for not including Temple identified issues, which was precluding the filing of motions for reconsideration. Tr. 10/3/16 39:4 – 20.	Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Reasoned Explanations and Extension of Time [Doc. 286]; Minute Order No. 54 [Doc. 656].
159.	26	The absence of such explanations denied the Temple the opportunity to file motions for reconsideration regarding the excluded issues, including the character issue.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Reasoned Explanations and Extension of Time [Doc. 286]; Minute Order No. 54 [Doc. 656].
160.	26	The Hearing Officer never took up the motion for reasoned explanations.	Unsupported/Unsubstantiated Inaccurate/False Estoppel/Improper Reconsideration See Temple's Mot. for Reasoned Explanations and Extension of Time [Doc. 286]; Minute Order No. 54 [Doc. 656].
161.	26-26	On October 6, 2016, the Temple filed its Motion to Schedule Pending Motions. DOC-324 (Temple of Lono motion to schedule pending motions). This motion sought to have thirteen pending pre-hearing	Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Not in Dispute UH Hilo and TIO do not dispute that the

		<p>matters, raised by the Temple and not taken up by the Hearing Officer, scheduled for resolution, including two motions to recuse the Hearing Officer; two motions for summary judgment that would be dispositive of the entire case, if successful; and the motion mentioned above seeking reasoned explanations for excluding issues, including the character issue. <u>Id.</u></p>	<p>Temple filed an untimely and procedurally improper Motion to Schedule Pending Motions, which asserted arguments that have been denied by the Hearing Officer. See Temple's Mot. to Schedule Pending Mots. [Doc. 324]; Minute Order No. 57 [Doc. 324].</p>
162.	27	<p>The Hearing Officer never took up the Temple's motion to schedule pending motions.</p>	<p>Unsupported/Unsubstantiated Inaccurate/False Estoppel/Improper Reconsideration See Temple's Mot. to Schedule Pending Mots. [Doc. 324]; Minute Order No. 57 [Doc. 324].</p>
163.	27	<p>On October 5, pursuant to an order from the Hearing Officer, the Applicant filed a proposed order denying the Temple's motion to file a motion out of time. DOC-318 [University of Hawaii at Hilo proposed Minute Order No. ___ denying Temple of Lono motion to dismiss out of time (Doc. 179)].</p>	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Not in Dispute</p>
164.	27	<p>On October 7, 2016, the Temple filed its response to the Applicant's proposed order. DOC-336 [Temple of Lono response to University of Hawaii at Hilo (proposed) Minute Order No. ___ denying Temple of Lono motion to dismiss out of time (Doc-179)].</p>	<p>Not in Dispute</p>
165.	27	<p>On October 11, 2016, the Hearing Officer issued a written Order denying the Temple's motion to file motion out of time. DOC-356 [Minute Order No. 33, Order denying Temple of Lono's motion to dismiss out of time (Doc. 179)]. The only basis for the denial was that the Temple had not provided good cause for allowing a motion to be filed out of time. <u>Id.</u></p>	<p>Mischaracterization. Minute Order No. 33 speaks for itself. Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 33 [Doc. 356].</p>
166.	27	<p>The Hearing Officer did not identify any cause that she did consider or otherwise explain the ruling on the absence of good cause. <u>Id. passim.</u></p>	<p>Inaccurate/False Mischaracterization. Minute Order No.</p>

<p>33 speaks for itself. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 33 [Doc. 356]; see also UH Opp. to Temple’s Mot. to File Mot. Out of Time [Doc. 194].</p>		
<p>Misrepresentation and Inaccurate/False as to “attack” Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 33 [Doc. 356]; see also UH Opp. to Temple’s Mot. to File Mot. Out of Time [Doc. 194].</p>	<p>The ruling made no mention of the Applicant’s attack filed in response to the Temple’s motion for partial summary judgment. <i>Id. passim.</i></p>	<p>27</p>
<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA See Minute Order Nos. 46 [Doc. 595], 47 [Doc. 609], 53 [Doc. 654], and 57 [Doc. No. 674]. See also Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p>	<p>On October 14, 2016, the Temple filed its Temple of Lono; Unresolved Matters identifying 13 pre-hearing matters on which the Hearing Officer had yet to take action on the eve of the Contested Case Hearing beginning, including the Motion for Summary Judgment (Disqualification) and the motion to recuse. DOC-371 (Temple of Lono: Unresolved matters).</p>	<p>27</p>
<p>Incomplete Unsupported/Unsubstantiated Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p>	<p>On {date} at a pre-hearing conference, the Temple representative brought the unresolved matters to the attention of the Hearing Officer again. Tr. Vol. *, P. *, L.*.</p>	<p>27</p>

170.	27	The Hearing Officer offered no response as to when, if ever, those items would be addressed. Tr. Vol. *, P. *, L.*.	Incomplete Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Unsupported/Unsubstantiated Inaccurate/False See Minute Order Nos. 46 [Doc. 595], 47 [Doc. 609], 53 [Doc. 654], and 57 [Doc. No. 674].
171.	27	The Contested Case Hearing began without the Hearing Officer taking up the Temple's unresolved matters.	Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA See Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)
172.	28	On October 28, 2016, the Board of Land and Natural Resources issued Minute Order No. 39 (Order Denying Renewed Motion to Disqualify Hearing Officer). DOC-406.	Not in Dispute
173.	28	As reflected in Minute Order No. 39: 2. Temple of Lono (“Lono”) filed a Substantive Joinder and Supplement to Petitioners Mauna Kea Anaina Hou et al.’s Renewed Motion to Disqualify Hearing Officer on October 10, 2016. DOC. 343. Lono also filed a Second Supplement and a Third Supplement, both on October 11, 2016. Docs. 360, 361. DOC-406 at 1; see also DOC-343 (Temple of Lono substantive joinder and supplement to petitioners Mauna Kea Anaina Hou, et al.’s renewed motion to disqualify hearing officer); DOC-360 (Temple of Lono second supplement to petitioners Mauna Kea Anaina Hou et al.’s	Not in Dispute

	renewed motion to disqualify Hearing Officer); DOC-361 (Temple of Lono third supplement to petitioners Mauna Kea Anaina et al.'s renewed motion to disqualify Hearing Officer).		
174.	In Minute Order No. 39, the Board attempted to characterize DOC-262 – the Temple’s motion to recuse the Hearing Officer – as a decided matter being given <u>reconsideration</u> . In fact, no decision had ever been made on that motion.	28	Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Unsupported/Unsubstantiated Mischaracterization Inaccurate/False See Minute Order No. 46 (Related to Temple of Lono Motion to Recuse Hearing Officer (Doc. Nos. 262, 434, 436, 536, 544)) [Doc. 595]. Estoppel/Improper Reconsideration See Minute Order No. 39 [Doc. 262]; Minute Order No. 46 [Doc. 595].
175.	The treatment of DOC-242 as already decided comes on page 4 of the Minute Order: Lono argues that the Hearing Officer violated its right to due process when she denied its request to file a late motion [DOCs. 179, 356], when she set the issues in the contested case hearing that it did not agree with [DOC. 281], and because she did not recuse herself from these proceedings upon Lono’s request [DOC. 262].	28	Mischaracterization Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 39 [Doc. 262]; Minute Order No. 46 [Doc. 595].
176.	DOC-406 at 4-5 (emphasis added). The first two items in that paragraph refer to actual rulings. The Temple did not, however, object to the Hearing Officer “when she set the issues in the contested case hearing that it did not agree with.” The Temple sought a reasoned explanation for why the Hearing Officer excluded some issues, DOC-286, so that the Temple could exercise its due process right to seek reconsideration of issues it wished to have	28	Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Inaccurate/False Mischaracterization Estoppel/Improper Reconsideration See Minute Order No. 39 [Doc. 262];

		included that were excluded. HAR §13-1-39.	Minute Order No. 46 [Doc. 595].
177.	28	The third item listed in the Minute Order does not refer to an actual ruling, i.e. the Hearing Officer had not ruled by that time on the Temple's motion requesting that she recuse herself. DOC-262.	Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Inaccurate/False Mischaracterization Estoppel/Improper Reconsideration See Minute Order No. 39 [Doc. 262]; Minute Order No. 46 [Doc. 595].
178.	28-29	Seven and a half months after the filing of the motion to recuse, the Hearing Officer issued a ruling denying the motion. Minute Order 46: Order related to Temple of Lono motion to recuse Hearing Officer (Doc. Nos. 262, 434, 436, 536, 544). DOC-595.	Not in Dispute
179.	29	The Temple moved to reconsider the decision on the motion to recuse. DOC-610 (Temple of Lono motion to reconsider Minute Order No. 46).	Not in Dispute UH Hilo and TIO do not dispute that the Temple filed a Motion for Reconsideration which asserted arguments that fail to meet the standard for reconsideration. See UH Hilo's Opp. to Temple's Mot. for Recon. of Minute Order No. 46 [Doc. 638]
180.	29	In its motion to reconsider, the Temple argued as follows: The Hearing Officer cannot possibly be objective about a motion to recuse filed last September. Since the filing of that motion, there has been an extensive proceeding, including 44 days of hearings. For the Hearing Officer to now rule that she should have disqualified herself more than seven months ago would irrevocably taint the proceeding since that time and be a basis for vacating this proceeding. The denial of the Temple's motion was pre-ordained	Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA UH Hilo and TIO do not dispute that the Temple filed a Motion for Reconsideration which asserted arguments that fail to meet the standard for reconsideration. See UH Hilo's Opp. to Temple's Mot. for Recon. of Minute Order No. 46 [Doc. 638]

		when the Hearing Officer chose to wait more than seven months before ruling while the proceeding continued.	
181.	29	<i>Ibid.</i> at 3. As noted above, the Temple participated directly in the litigation leading up to the issuance of Minute Order No. 39 by filing a joinder and three supplements. DOCs-343, 360, and 361.	Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Whether the Temple “participated directly in the litigation” is irrelevant to the issues in this proceeding. However, UH Hilo and TIO do not dispute that the Temple participated fully and directly in this contested case proceeding.
182.	29	On November 4, 2016, the Temple filed its Motion to Vacate Minute Order No. 39 or, Alternatively, to Partially Reconsider Minute Order No. 39. DOC-409 (Temple of Lono motion to vacate Minute Order No. 39 or, alternatively to partially reconsider Minute Order No. 39). That motion contains a direct challenge to the veracity of the Minute Order’s treatment of DOC-262. DOC-409, Exhibit “AA” at 10-11.	Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Inaccurate/False. See UH Hilo’s Opp. to Temple’s Mot. to Vacate Minute Order No. 39 [Doc. 417]. Moreover, the Temple’s motion was filed on November 6, 2016.
183.	29	The Board never ruled on the Temple’s motion to vacate Minute Order No. 39.	Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA UH Hilo and TIO do not dispute that the BLNR has not ruled on the Temple’s Motion. However, the BLNR is under no obligation to rule on improperly filed motions.
184.	29	On January 8, 2016, the Temple filed a request for a witness subpoena to require President David Lassner of the University of Hawai‘i System to appear. DOC-438.	Not in Dispute

185.	29	The Temple requested a subpoena for President Lassner to determine the basis for the University's attack on the Temple in DOC-135 and the University's response to the characterizations of the Temple found in DOC-135. DOC-438 at 5. ("The subpoena of President Lassner requested by the Temple will finally provide an opportunity for the Temple to hear from the Applicant on the bases for the attack and any response by the President of the University or any other University official once placed on notice of the attack.")	Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA Inaccurate/False and Misrepresentation as to "attack." Estoppel/Improper Reconsideration See Tr. 1/26/17 at 12:12-13-1.
186.	30	The Hearing Officer orally denied the Temple's request for the subpoena. Tr. Vol. *, P. *, L.*.	Incomplete
187.	30	The Hearing Officer found the evidence that the Temple sought to produce through the witness was not relevant or material to the proceeding. Tr. Vol. *, P. *, L.*.	Incomplete
188.	30	The Hearing Officer directed the University to draft an order denying the subpoena. Tr. Vol. *, P. *, L.*.	Incomplete
189.	30	The University did draft an order. DOC-457.	Not in Dispute
190.	30	The Hearing Officer never issued a final order, which precluded the Temple filing a motion for reconsideration.	Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration Neither the Temple nor its representative objected to the Hearing Officer's ruling at any point prior to the close of the hearing. Inaccurate/False. See Minute Order No. 66.
191.	30	The Hearing Officer ruled that motions for reconsideration were only appropriate once a written order was issued, not in response to an oral ruling. See DOC-211 (Temple of Lono withdrawal of motion for reconsideration [Doc-178] without prejudice). In the absence of a	Inaccurate/False. See Minute Order No. 66. Irrelevant/Inapplicable -- This FOF has

192.	30	<p>written order, no motion for reconsideration could be filed. See also Tr 8/5/16 128:17 – 129:2; 8/12/16 63:8 – 12; 64:7 –17; 65 1 – 23; 67:21 – 68:3; 81:15 -- 20; 8/29/16 9:24 -- 10:12</p> <p>The failure of the Hearing Officer to file a final order denied the Temple an opportunity to file a motion for reconsideration of the ruling on the subpoena request. HAR §13-1-39.</p>	<p>no bearing on the merits of the CDUA Estoppel/Improper Consideration</p> <p>Neither the Temple nor its representative objected to the Hearing Officer's ruling at any point prior to the close of the hearing.</p> <p>Inaccurate/False. See Minute Order No. 66.</p> <p>Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration</p> <p>Neither the Temple nor its representative objected to the Hearing Officer's ruling at any point prior to the close of the hearing.</p>
193.	30	<p>The Hearing Officer refused to take up numerous motions and related filings by the Temple or addressed them so long after they were filed that an objective consideration of the merits was impossible.</p>	<p>Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA Unsupported/Unsubstantiated Inaccurate/False Misrepresentation See Minute Order 46 [Doc. 595]; Minute Order 47 [Doc. 609]; Minute Order No. 53 [Doc. 654]; Minute Order No. 57 [Doc. 674].</p> <p>Estoppel/Motion for Reconsideration. See Minute Order No. 39 at 3 [Doc. 406] (*No authority mandates a deadline for issuing orders on motions in contested</p>

<p>cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p>		
<p>Inaccurate/False See Minute Order No. 46 [Doc. 595]; Minute Order No. 47 [Doc. 609]; Minute Order No. 53 [Doc. 654]; Minute Order No. 56 [Doc. 660]; Minute Order No. 57 [Doc. 674].</p>	<p>Those pleadings included:</p> <p>a. DOC-324 (Temple of Lono motion to schedule pending motions), filed October 6, 2016. This motion identified four separate motions not taken up by the Hearing Officer at the time the Temple filed the motion to schedule: DOC-262 (Motion to Recuse Hearing Officer; DOC-263 [Motion for Summary Judgment (Disqualification)]; DOC-264 [Motion for Summary Judgment (Desecration)] and DOC-286 (Motion for Reasoned Explanations and Extension of Time). The Hearing Officer never took up this motion.</p> <p>b. DOC-262: Motion to Recuse Hearing Officer, filed September 17, 2016. (1) On May 2, 2017, the Hearing Officer filed Minute Order No. 46 (Related to Temple of Lono Motion to Recuse Hearing Officer (Doc. Nos. 262, 434, 436, 536, 544). DOC-595. (2) On May 4, 2017, the Temple filed a motion to reconsider Minute Order 46. DOC-610. (3) The Temple response argued that the Hearing Officer could not possibly be objective in ruling on this motion because to grant the motion would be to rule that the Hearing Officer should have recused herself more than seven months before, so the hearings held were essentially a waste of time. <u>Ibid.</u> at 2-3. (4) The Hearing Officer, therefore, had no choice other than to deny the motion. (5) The failure to rule in a timely manner denied the Temple an</p>	

	<p>opportunity to be heard at a meaningful time and in a meaningful manner.</p> <p>c. DOC-263: Motion for Summary Judgment (Disqualification), filed September 17, 2016.</p> <p>(1) On May 4, 2017, the Hearing Officer filed Minute Order No. 47 (Related to Temple of Lono Motion for Summary Judgment (Disqualification) (Doc. 263)). DOC-609</p> <p>(2) On May 5, 2017, the Temple filed a motion to reconsider Minute Order 47. DOC-619 (Temple of Lono motion to reconsider Minute Order No. 47).</p> <p>(3) The Temple response argued that the Hearing Officer could not possibly be objective in ruling on this motion because to grant the motion would be to rule that the Hearing Officer should have recused herself more than seven months before, so the hearings held were essentially a waste of time. <u>Ibid.</u> at 2.</p> <p>(4) The Hearing Officer, therefore, had no choice other than to deny the motion.</p> <p>(5) The failure to rule in a timely manner denied the Temple an opportunity to be heard at a meaningful time and in a meaningful manner.</p> <p>d. DOC-264: Motion for Summary Judgment (Desecration), filed September 17, 2016.</p> <p>(1) While filing a late ruling on two of the four motions identified in the Temple's motion to schedule pending motions, DOC-324, the Hearing Officer never ruled on this third motion.</p> <p>e. DOC-286: Motion for Reasoned Explanations and Extension of Time, filed September 17, 2016.</p> <p>(1) The Hearing Officer never ruled on this fourth motion identified in the Temple's motion to schedule pending motions. DOC-324.</p>	
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195.	32	These motions are substantive.	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Unsupported/Unsubstantiated Inaccurate/False</p> <p>The Hearing Officer is under no obligation to take up untimely motions on issues not properly before the Hearing Officer. <i>See</i> Minute Order No. 13 (setting deadlines for prehearing motions) [Doc. 115]; Minute Order No. 19 [Doc. 281].</p>
196.	32-33	<p>In the case of DOCs-263 and 264, the motions were potentially dispositive of this case.</p> <p>f. October 14, 2016 – DOC-371 (Temple of Lono: Unresolved matters) Just prior to the first hearing, the Temple brought unresolved pre-hearing matters to the attention of the Hearing Officer. In addition to the four motions identified in DOC- 324 and DOC-324 itself, DOC-371 identified eight additional motions not yet ruled upon:</p> <p>(1) DOC-329: Temple of Lono Motion for Extension of Time for Filing of Final Witness List and Pre-filed Testimony, Exhibit List and Exhibits, Prehearing Statements, and Motions Filed: October 7, 2016 Status: Never scheduled for briefing; mooted by inaction</p> <p>(2) DOC-337: Temple of Lono Supplement to Motion for Extension of Time Filed: October 7, 2016 Status: Never scheduled for briefing; mooted by inaction</p> <p>(3) DOC-343: Temple of Lono substantive joinder and supplement to petitioners Mauna Kea Anaina Hou, et al.'s renewed motion to disqualify hearing officer Filed: October 10, 2016 Status: Later ruled upon; see Minute Order 39 (Order Denying Renewed Motions to Disqualify Hearing Officer</p>	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p>Inaccurate/False</p> <p><i>See</i> Minute Order No. 46 [Doc. 595]; Minute Order No. 47 [Doc. 609]; Minute Order No. 53 [Doc. 654]; Minute Order No. 54 [Doc. 656]; Minute Order No. 57 [Doc. 674]; Minute Order No. 39 [Doc. 406].</p> <p>The Hearing Officer is under no obligation to take up untimely motions on issues not properly before the Hearing Officer. <i>See</i> Minute Order No. 13 (setting deadlines for prehearing motions) [Doc. 115]; Minute Order No. 19 [Doc. 281].</p>

	<p>(DOC-340)) filed October 28 (one week after the close of the pre-hearing phase and the beginning of the hearing phase See Tr Vol. 1.</p>	
	<p>(4) DOC-360: Temple of Lono second supplement to petitioners Mauna Kea Anaina Hou et al.'s renewed motion to disqualify Hearing Officer Filed: October 11, 2016 Status: Ruled upon after hearings began. See Minute Order 39, supra</p>	
	<p>(5) DOC-361: Temple of Lono third supplement to petitioners Mauna Kea Anaina Hou et al.'s renewed motion to disqualify Hearing Officer Filed: October 11, 2016 Status: Ruled upon after hearings began. See Minute Order 39, supra</p>	
	<p>(6) DOC-364: Temple of Lono motion to strike for failure to serve or extension of time and rescheduling of hearing Filed: October 12, 2016 Status: Never ruled upon</p>	
	<p>(7) DOC-367: Temple of Lono Supplement to motion to strike [DOC-364] Filed: October 13, 2016 Status: Never ruled upon</p>	
	<p>(8) DOC-368: Temple of Lono Second Supplement to motion to strike [DOC-364] Filed: October 13, 2016 Status: Never ruled upon</p>	
	<p>(9) DOC-474 (Temple of Lono motion to strike UHH opposition) Filed: February 22, 2017 Status: Never ruled upon</p>	
	<p>(10) DOC-490 (Temple of Lono motion to strike TIO opposition) Filed: March 3, 2017 Status: Never ruled upon</p>	

197.	33	<p>In addition to the pleadings identified in FoFs {*, *, ...}, the Hearing Officer never took up that following Temple pleadings or ruled upon them in an untimely fashion:</p> <ul style="list-style-type: none"> a. DOC-293 (Motion for reconsideration) Filed: September 29, 2016 Status: Never ruled upon b. DOC-329 (Motion for extension of time) Filed: October 7, 2016 Status: Never ruled upon c. DOC 337 (Supplement to motion for extension of time) Filed: October 7, 2016 Status: Never ruled upon d. DOC-410 (Motion to restore full cross-examination rights) Filed: November 7, 2016 Status: Never ruled upon e. DOC-427 (Motion to dismiss TIO as intervener) Filed: December 15, 2016 Status: Never ruled upon f. DOC-435 (Temple of Lono motion to strike University of Hawai'i at Hilo's opposition to Temple of Lono motion for summary judgment, filed September 17, 2016 (Disqualification) [DOC-263]) Filed: December 31, 2016 Status: Ruled upon in Minute Order 47, DOC-609 filed May 4, 2017. Reconsideration still pending as of May 21, 2017. g. DOC-436 (Temple of Lono motion to strike University of Hawai'i at Hilo's opposition to Temple of Lono motion to recuse Hearing Officer, filed September 17, 2016 [DOC-262]) Filed: December 31, 2016 Status: Ruled upon in Minute Order 46, DOC-595 filed May 2, 2017. Reconsideration still pending as of May 21, 2017. 	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p>Incomplete</p> <p>Inaccurate/False</p> <p>See Minute Order No. 56 [Doc. 660]; Minute Order No. 47 (Doc. 609); Minute Order No. 46 [Foc. 595]</p> <p>Misrepresentation: As the Hearing Officer has repeatedly stated, the motions deadline was July 21, 2016. The Hearing Officer is under no obligation to take up untimely motions on issues not properly before the Hearing Officer. See Minute Order No. 13 (setting deadlines for prehearing motions) [Doc. 115]; Minute Order No. 19 (setting the issues) [Doc. 281].</p> <p>Estoppel/Motion for Reconsideration. See Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p>
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198.	34	<p>There were two Temple motions that the Board did not take up:</p> <ul style="list-style-type: none"> a. November 6, 2016 – DOC-409 (Temple of Lono motion to vacate Minute Order No. 39). b. March 19, 2017 – DOC-516 (Temple of Lono motion to Board of Land and Natural Resources to dismiss HA-3568) 	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p>UH Hilo and TIO do not dispute that the BLNR has not ruled on the motions. However, the BLNR is under no obligation to rule on improperly filed motions.</p> <p>See <i>also</i> Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases....”)</p>
199.	34	<p>In addition to failing to rule or making untimely rulings, the Hearing Officer made oral rulings that were never followed up by a minute order. Such orders included:</p> <ul style="list-style-type: none"> a. January 8, 2017 – DOC-438 – Temple of Lono request for a witness subpoena for President David Lassner b. February 1, 2017 – DOC 457 {[Proposed] Minute Order No. _____ Denying Temple of Lono Requesting for Witness Subpoena for David Lassner, President of the University of Hawai‘i System [Doc. 438] and Granting the University of Hawai‘i at Hilo’s Motion to Quash Temple of Lono Request for Witness Subpoena for David Lassner, President of the University of Hawai‘i System, Filed January 8, 2017 [Doc. 445]} – Draft Order submitted to Hearing Officer and never filed, thereby denying Temple an opportunity to seek reconsideration. 	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p>Estoppel/Motion for Reconsideration. See Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p>
200.	34	<p>The Hearing Officer ruled that there would be no discovery. Tr. V.*, P.*, L.*</p>	<p>Unsupported/Unsubstantiated Incomplete Irrelevant/Inapplicable – This FOF has</p>

		no bearing on the merits of the CDUA
201.	34	<p>The Hearing Officer ordered all parties to present their cases at the same time, rather than the Applicant with the burden of proof being required to put on its case first. Tr 10/3/17 41:13-24; 78:19-21.</p>
202.	34	<p>The Temple repeatedly brought the issue of procedural matters violating due process rights to the attention of the Hearing Officer. See e.g. DOC-296, DOC-329, DOC-337, DOC-343, DOC-360 at 4-5.</p>
203.	34	<p>The Hearing Officer denied the Temple's motion to file motion out of time, which would have allowed the Temple to file a motion to dismiss the application based on the Applicant's unwarranted and bigoted attack on the Temple. DOC-179; Tr. 8/29/16 19:10 – 28:2; <i>ibid.</i> 28:9 – 12; DOC 356.</p>

Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 39 at 4 [Doc. 406] (“The Hearing Officer has the authority to set the time for submission of documents and briefs. See HAR § 13-1-32(c).”)*See, also* UH-TIO COL 37-43 (general authority of Hearing Officer).

Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 39 at 4 [Doc. 406] (“The Hearing Officer has the authority to set the time for submission of documents and briefs. See HAR § 13-1-32(c).”)*See, also* UH-TIO COL 37-43 (general authority of Hearing Officer).

Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 39 at 4-5 [Doc. 356]; Minute Order No. 39 at 4-5 [Doc. 406].

The Hearing Officer is under no obligation to take up untimely motions on issues not properly before the Hearing Officer. See Minute Order No. 13 (setting deadlines for prehearing motions) [Doc.

204.	35	<p>The Hearing Officer rejected almost all of the issues identified by the Temple as relevant to the Temple's case. <i>Compare</i> DOC-265 (Temple of Lono proposed issues) and DOC-281 (Minute Order 19: Order granting Peperuating [sic] Unique Educational Opportunities, Inc.'s motion to set issues).</p>	<p>115]; Minute Order No. 19 (setting the issues) [Doc. 281].</p> <p>Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].</p>
205.	35	<p>The Hearing Officer's repeated failures to issue orders led one party to propose that the prevailing party assume responsibility for writing orders for the Hearing Officer to sign, which would, in turn, presumably provide a reasoned explanation that the non-prevailing party could use to prepare a motion for reconsideration. Tr. 10/3/16 47:4 -- 48:7.</p>	<p>Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA Citation does not support assertion Unsupported/Unsubstantiated Inaccurate/False</p>
206.	35	<p>The Hearing Officer began the hearing process prior to taking up and resolving any of the motions or matters identified above as unscheduled, unheard, or otherwise not dealt with completely.</p>	<p>Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA Unsupported/Unsubstantiated Inaccurate/False. <i>See, e.g.,</i> Minute Order No. 33 [Doc. 356] Estoppel/Improper Reconsideration <i>See</i> Minute Order No. 39 at 3 [Doc. 406] ("No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.")</p>
207.	35	<p>The Hearing Officer set a deadline for the filing of findings of fact and conclusions of law prior to the record being complete. <i>See</i> Minute Order 43 (Order setting post-hearing deadlines) filed on April 18, 2017 <i>citing</i> HAR §13-1-38. DOCs- 552 through 642.</p>	<p>Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration <i>See</i> Temple's Mot. for Recon. Minute Order No. 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>

208.	35	<p>Numerous parties requested the Hearing Officer reconsider that scheduling because the cited rule said that the preparation of findings of fact should begin when the record is complete and the record was not complete. See e.g. DOC-559 (Temple of Lono motion for reconsideration of Minute Order 43) filed April 18, 2017.</p>	<p>Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon. Minute Order No. 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p> <p>Mischaracterization. HAR § 13-1-38 does not state that the "preparation" of proposed findings and conclusions "should begin" by a stated deadline. The Hearing Officer repeatedly advised the parties (beginning in <i>October 2016</i>) that they should work on their proposed findings and conclusions as the hearing was ongoing. See Minute Order No. 50 [Doc. 646] at 8-9.</p>
209.	35	<p>Parties were also required to prepare the findings and conclusions while litigating unfinished matters. As the record reflects, after the filing of Minute Order 43, parties filed almost 80 pleadings litigating issues potentially affecting the record. DOCs-552 through 631.</p>	<p>Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA</p> <p>Mischaracterization Misrepresentation Estoppel/Improper Reconsideration See Temple's Mot. for Recon. Minute Order No. 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>
210.	35	<p>This continuing litigation included determining which exhibits would be admitted into evidence. See Minute Order 44 (Order regarding documentary evidence).</p>	<p>Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon. Minute Order No. 43 [Doc. 559]; Minute Order No. 50 [Doc. 646]; Minute Order No. 51 [Doc. 647]; Amended Minute Order No.</p>

211.	35	<p>The Hearing Officer continued to issue rulings on matters not previously resolved. <u>See e.g.</u> Minute Order 44 (Order regarding documentary evidence) filed on April 20, 2017, DOC-553; Minute Order 46 (Order related to Temple of Lono motion to recuse Hearing Officer (Doc. Nos. 262, 434, 436, 536, 544)) filed May 2, 2017; Minute Order 47 (Order related to Temple of Lono motion for summary judgment (disqualification)) filed May 4, 2017, DOC-595.</p>	44 [Doc. 649].
212.	35	<p>All such orders were subject to motions for reconsideration, which prolonged the completion of the record still further. <u>See e.g.</u> DOCs-569 (Temple of Lono Motion for Reconsideration of Minute Order 44), 610 (Temple of Lono Motion for Reconsideration of Minute Order 46), 619 (Temple of Lono Motion for Reconsideration of Minute Order 47).</p>	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p><i>See also</i> arguments set forth in UH-Hilo’s Opp. to Temple’s Mot. for Recon Minute Order No. 47 at 4 [Doc. 641].</p>
213.	36	<p>As of May 21, 2017, with one week left to prepare findings of fact, the Hearing Officer had still not filed orders resolving the challenges to hundreds of exhibits whose exclusion led to motions for reconsideration. <u>See</u> DOCs-575, 576, 577, 579, 580, 581, 586, 587, 592, 603, 610, 611, 613, 614, 615, 616, 617, 620, 621, 625, 628, 634, 640.</p>	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p>Estoppel/Improper Reconsideration</p> <p><i>See</i> Temple’s Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646]; <i>see also</i> arguments set forth in UH-Hilo’s Opp. to Temple’s Mot. for Recon Minute Order No. 43 at 2-3 [Doc. 594].</p>

214.	36	<p>When the Hearing Officer set the deadline for the filing of decisions and orders, including findings of fact and conclusions of law, Minute Order 43 also included the following:</p> <p>FILING/SUBMISSION PROCEDURE. An original of the filing/submission must be received by the DLNR Office of Conservation and Coastal Lands, 1151 Punchbowl Street, Room 131, Honolulu, Hawai'i 96813: no later than 4:00 p.m. on the deadline set forth. (emphasis added). A digital copy in pdf form should be sent to dlnr.maunakea@hawaii.gov, or delivered to the above office on the same deadline.</p> <p>MO 43 at 3. (emphasis in original).</p>	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p>Minute Order No. 43 [Doc. 552] speaks for itself.</p>
215.	36	<p>Throughout this proceeding, the filing of an <u>electronic</u> copy within the deadline satisfied the deadline. See DOC-629 [Protector / parties' petition to Board for declaratory judgment and motion to vacate Minute Order 43; Exhibit 1 (Declaration of Kealoha Pisciotta) at ¶¶ 4-8.]</p>	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p>Inaccurate/False. See TIO's Opp. to C. Freitas's Mot. for Recon of Minute Order 43 at 5-7 [Doc. 596]; see, e.g., Minute Order 13 at 7 [Doc. 115].</p> <p>Estoppel/Improper Reconsideration – The Temple waived arguments to the filing procedure in Minute Order No. 43 by failing to raise them in its Motion for Reconsideration. See Doc. 559; see also C. Freitas's Mot. for Recon of Minute Order 43 at 5-7 [Doc. 596] (objecting to filing procedure); Minute Order No. 50 [Doc. 646] (denying C.Freitas's motion).</p> <p>Moreover, the Hearing Officer already rejected this same argument raised in the Temple's Mot. for Recon of Minute Order 44. See Temple's Mot. for Recon</p>

<p>of Minute Order 44 at 2-4 [Doc. 569]; Minute Order No. 51 at 6-7 [Doc. 647].</p> <p>HAR § 13-1-32(c) grants the Hearing Officer broad discretion and authority to “fix times for submitting documents, briefs, and dispose of other matters that normally and properly arise in the course of a hearing.”</p>		
<p>Misleading; Presented out of Context Citation does not support proposition. HRS § 91-9(d) is permissive.</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Citation does not support proposition. HAR § 13-1-32(c) grants the Hearing Officer broad discretion and authority to “fix times for submitting documents, briefs, and dispose of other matters that normally and properly arise in the course of a hearing.”</p> <p>Inaccurate/False. See TIO’s Opp. to C. Freitas’s Mot. for Recon of Minute Order 43 at 5-7 [Doc. 596]; see, e.g., Minute Order 13 at 7 [Doc. 115]. Estoppel/Improper Reconsideration – The Temple waived arguments to the filing procedure in Minute Order No. 43 by failing to raise them in its Motion for Reconsideration. See Doc. 559; see also C. Freitas’s Mot. for Recon of Minute</p>	<p>This sudden change in the procedure took place with no notice and no consultation. Cf. HRS § 91-9(d) (“Any procedure in a contested case may be modified or waived by stipulation of the parties”).</p>	<p>216.</p> <p>36</p>

<p>Order 43 at 5-7 [Doc. 596] (objecting to filing procedure); Minute Order No. 50 [Doc. 646] (denying C.Freitas's motion).</p>		
<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Inaccurate/False. The procedure set forth in Minute Order No. 51 applies to all parties. Moreover, HAR § 13-1-32(c) grants the Hearing Officer broad discretion and authority to “fix times for submitting documents, briefs, and dispose of other matters that normally and properly arise in the course of a hearing.”³</p> <p>Estoppel/Improper Reconsideration – The Temple waived arguments to the filing procedure in Minute Order No. 43 by failing to raise them in its Motion for Reconsideration. <i>See</i> Doc. 559; <i>see also</i> C. Freitas’s Mot. for Recon of Minute Order 43 at 5-7 [Doc. 596] (objecting to filing procedure); Minute Order No. 50 [Doc. 646] (denying C.Freitas’s motion).</p> <p>Moreover, the Hearing Officer already rejected this same argument raised in the Temple’s Mot. for Recon of Minute Order 44. <i>See</i> Temple’s Mot. for Recon of Minute Order 44 at 2-4 [Doc. 569]; Minute Order No. 51 at 6-7 [Doc. 647].</p> <p>Unsupported/Unsubstantiated. HAR § 13-1-32(c) grants the Hearing Officer</p>	<p>Under this new rule, those parties who are not represented by lawyers on Oahu or do not reside on Oahu, are required to complete their documents and put them in the hands of a delivery service in time to have the <u>original</u> delivered to Oahu by the deadline.</p>	
<p>217.</p>	<p>36</p>	<p>218.</p>
<p>Essentially, the new filing rule reduces the time available to parties not on Oahu for preparing a pleading by at least a day and a half.</p>	<p>36</p>	<p>Essentially, the new filing rule reduces the time available to parties not on Oahu for preparing a pleading by at least a day and a half.</p>

		<p>broad discretion and authority to “fix times for submitting documents, briefs, and dispose of other matters that normally and properly arise in the course of a hearing.”</p> <p>Inaccurate/False</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration</p> <p>– The Temple waived arguments to the filing procedure in Minute Order No. 43 by failing to raise them in its Motion for Reconsideration. See Doc. 559; see also C. Freitas’s Mot. for Recon of Minute Order 43 at 5-7 [Doc. 596] (objecting to filing procedure); Minute Order No. 50 [Doc. 646] (denying C.Freitas’s motion).</p> <p>Moreover, the Hearing Officer already rejected this same argument raised in the Temple’s Mot. for Recon of Minute Order 44. See Temple’s Mot. for Recon of Minute Order 44 at 2-4 [Doc. 569]; Minute Order No. 51 at 6-7 [Doc. 647].</p> <p>Not in Dispute</p>
219.	36	<p>The findings and conclusions are due in Oahu on May 30, 2017. DOC-552 (Minute Order 43).</p>
220.	36	<p>Monday, May 29 is a holiday. That means that pleadings from outer islands must be given to the delivery service two or three before the deadline.</p> <p>Unsupported/Unsubstantiated</p> <p>Inaccurate/False</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration</p> <p>– The Temple waived arguments to the</p>

		<p>filing procedure in Minute Order No. 43 by failing to raise them in its Motion for Reconsideration. <i>See</i> Doc. 559; <i>see also</i> C. Freitas's Mot. for Recon of Minute Order 43 at 5-7 [Doc. 596] (objecting to filing procedure); Minute Order No. 50 [Doc. 646] (denying C.Freitas's motion).</p> <p>Moreover, the Hearing Officer already rejected this same argument raised in the Temple's Mot. for Recon of Minute Order 44. <i>See</i> Temple's Mot. for Recon of Minute Order 44 at 2-4 [Doc. 569]; Minute Order No. 51 at 6-7 [Doc. 647].</p> <p>HAR § 13-1-32(c) grants the Hearing Officer broad discretion and authority to "fix times for submitting documents, briefs, and dispose of other matters that normally and properly arise in the course of a hearing."</p>
221.	36	<p>Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration – The Temple waived arguments to the filing procedure in Minute Order No. 43 by failing to raise them in its Motion for Reconsideration. <i>See</i> Doc. 559; <i>see also</i> C. Freitas's Mot. for Recon of Minute Order 43 at 5-7 [Doc. 596] (objecting to filing procedure); Minute Order No. 50</p>
221.	36	<p>This new procedure gives the lawyers for the Applicant on Oahu four more days that the parties on other islands in which to complete their filings.</p>

<p>[Doc. 646] (denying C.Freitas's motion). Moreover, the Hearing Officer already rejected this same argument raised in the Temple's Mot. for Recon of Minute Order 44. See Temple's Mot. for Recon of Minute Order 44 at 2-4 [Doc. 569]; Minute Order No. 51 at 6-7 [Doc. 647]. HAR § 13-1-32(c) grants the Hearing Officer broad discretion and authority to "fix times for submitting documents, briefs, and dispose of other matters that normally and properly arise in the course of a hearing."</p>		
<p>Unsupported/Unsubstantiated. See arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>	<p>The Hearing Officer repeatedly expressed her "inclination" to take in all the proffered exhibits with very few exceptions.</p>	<p>222. 37</p>
<p>Unsupported/Unsubstantiated. See arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>	<p>The Protector Interveners believed that would be the process, much to their detriment.</p>	<p>223. 37</p>

224.	37	The process for admission of exhibits set forth by the Hearing Officer called for the parties to submit motions seeking such admission.	Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].
225.	37	The parties did file such motions. DOCs 480, 481, 482, 483, 485, 486, 487, 488, 489, 491, 492, 493, 494, 495, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 517, 519. The Temple filed one such motion. DOC-491.	<p>Unsupported/Unsubstantiated. <i>See</i> arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration</p> <p><i>See</i> Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p> <p><i>See</i> arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration</p> <p><i>See</i> Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>
226.	37	The Hearing Officer enunciated many times that she expected few objections because she intended to simply grant all such motions and then decide what weight to give to the exhibits admitted into evidence. V27 252:9 – 253.3.	<p>Citation does not support proposition.</p> <p><i>See</i> arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration</p> <p><i>See</i> Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>

227.	37	<p>The process as defined by the Hearing Officer meant that parties did not spend time establishing the admissibility of an exhibit while the witness associated with the exhibit was testifying. There was, therefore, no record that could be cited to later argue for admissibility of the exhibit.</p>	<p>Unsupported/Unsubstantiated Inaccurate/False. See arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>
228.	37	<p>Moving to admit exhibits was specifically <u>not</u> a part of the witness phase of the proceeding. The Hearing Officer rejected any attempt to admit an exhibit into evidence during the testimony phase based on the "all in at the end" nature of the proceeding as defined by the Hearing Officer. ** Nagata – LAS cross.</p>	<p>Incomplete Citation does not support proposition. Inaccurate/False. See arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>
229.	37	<p>A second impact was that the sponsor of an exhibit had no reason to make an admissibility argument when moving, at the end of the hearing, to admit exhibits. Not having developed a record to support admissibility, such an argument would have been difficult, if not impossible, to make.</p>	<p>Unsupported/Unsubstantiated Inaccurate/False. See arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p>

<p>230.</p>	<p>37-38</p>	<p>The result of this process was that the parties made motions for the admission of exhibits in a <i>pro forma</i> fashion without arguing the admissibility of the individual documents. See e.g. DOC-491 (Temple of Lono motion to admit opening statement, pre-filed testimony, and exhibits into evidence citing applicable rules without making argument for admissibility of each document moved into evidence); see also DOC-506 (The University of Hawai'i at Hilo's supplemental motion to admit exhibits and written direct testimony into evidence and objection to admission of certain exhibits and written direct testimony moving exhibits into evidence based on generally applicable rules without providing exhibit-specific support for motion); DOC-451 (TMT International Observatory's motion to admit exhibits and written direct testimony into evidence citing generally the applicable statutes and rules without making any argument for the admissibility of each specific document); DOC- 485 (Perpetual Unique Education Opportunities, Inc.'s Motion to Admit Written Direct Testimony and Exhibit making generic statement that all exhibits are admissible with references to applicable rules without making argument for the admissibility of each specific exhibit based on a record); DOC-502 (Mehana Kihoi's motion to admit exhibits and written direct testimony into evidence making generic reference to the relevant statute without making an argument for the admissibility of each specific exhibit).</p>	<p>Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>
<p>231.</p>	<p>38</p>	<p>The Hearing Officer, in almost all cases, therefore, had no <u>initial</u> exhibit-specific argument for admissibility from the exhibit sponsor to consider when deciding whether to receive a particular exhibit into evidence.</p>	<p>Citations do not support proposition. Unsupported/Unsubstantiated Inaccurate/False. See arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>
<p>231.</p>	<p>38</p>	<p>The Hearing Officer, in almost all cases, therefore, had no <u>initial</u> exhibit-specific argument for admissibility from the exhibit sponsor to consider when deciding whether to receive a particular exhibit into evidence.</p>	<p>Unsupported/Unsubstantiated Inaccurate/False. See arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Irrelevant/Inapplicable – This FOF has</p>

<p>no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>		
<p>Unsupported/Unsubstantiated Misrepresentation Vague/Ambiguous/Argumentative Inaccurate/False. See arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>	<p>The parties facing objections had a rude awakening when the Hearing Officer decided to grant objections to exhibits before providing the parties any time to respond to objections by presenting arguments for admissibility. Order 44.</p>	<p>38</p>
<p>Unsupported/Unsubstantiated Inaccurate/False. See arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>	<p>Even if the Hearing Officer had provided time to respond to objections, that allowance could not cure the problem created by the fact that admissibility of an exhibit could well depend on the testimony of the witness with whom the exhibit was associated. There was no reason or permission to seek such testimony when the witness was testifying and no opportunity to recall the witness once it became clear that the process was not going to be as portrayed repeatedly by the Hearing Officer.</p>	<p>38</p>
<p>Unsupported/Unsubstantiated Inaccurate/False. See arguments set forth</p>	<p>Given that the process as described by the Hearing Officer meant that there was no reason for the parties to present arguments for</p>	<p>38</p>

	<p>admissibility of each document at the time motions to admit exhibits were filed, the proper procedure would have been (a) filing of motion to admit exhibit, (b) filing of objection to admission, (c) filing a response to the objection, (d) ruling by the Hearing Officer on each objection in an order that provided reasonable explanation for each ruling, (e) motions for reconsideration, (f) response to motion for reconsideration, and (g) final ruling.</p>	<p>in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>
235.	<p>38</p> <p>As documented in Order 44, the Hearing Officer erroneously failed to provide time in the schedule for responses to objections to be filed. Order 44 at 1.</p>	<p>Unsupported/Unsubstantiated</p> <p>Inaccurate/False. See arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 5-6 [Doc. 599].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>
236.	<p>38</p> <p>The process enunciated by the Hearing Officer might have worked had all parties fulfilled the Hearing Officer's expectations of few objections, if any.</p>	<p>Unsupported/Unsubstantiated</p> <p>Inaccurate/False. See arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order</p>

237.	38	Instead, the Applicant filed multiple objections to 237 exhibits, DOC-514, and TIO filed additional objections to 76 exhibits. DOC-511.	No. 51 [Doc. 647]. Unsupported/Unsubstantiated Inaccurate/False. See arguments set forth in UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Irrelevant/Inapplicable -- This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].
238.	39	Once the reality of hundreds of objections emerged, Intervener Mauna Kea Anaina Hou filed its motion requesting time to respond to exhibit objections and related matters. DOC-522. Other interveners joined that motion. DOCs 524, 526, 527, 528, 530, 532, 535, 538, 539, 540, 541, 545.	Inaccurate/False Misrepresentation UH Hilo and TIO do not dispute that several parties filed motions requesting additional time to respond to exhibit objections. However, despite having over a month to do so, none of those parties attempted to file such a response (with an accompanying motion for leave to file a response). See UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Furthermore, Minute Order No. 44 explicitly allowed parties to present objections that it could not have raised previously through a motion for reconsideration. See Minute Order No. 44 at 6 [Doc. 553]. Irrelevant/Inapplicable -- This FOF has

<p>no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>		
<p>Misrepresentation UH Hilo and TIO do not dispute that several parties filed motions requesting additional time to respond to exhibit objections. However, despite having over a month to do so, none of those parties attempted to file such a response (with an accompanying motion for leave to file a response). See UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Furthermore, Minute Order No. 44 explicitly allowed parties to present objections that it could not have raised previously through a motion for reconsideration. See Minute Order No. 44 at 6 [Doc. 553].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>	<p>The Hearing Officer never ruled on that motion.</p>	
<p>Not in Dispute</p>	<p>The Temple filed a motion seeking a protective order "clarifying that there is no obligation on the part of parties whose testimony and exhibits have been subject to objections to file responses at this time." DOC-546. Other interveners joined in that motion. DOCs-547, 548.</p>	<p>239.</p> <p>39</p> <p>240.</p> <p>39</p>

241.	39	The Hearing Officer never ruled on that motion	<p>Misrepresentation</p> <p>UH Hilo and TIO do not dispute that several parties filed motions requesting additional time to respond to exhibit objections. However, despite having over a month to do so, none of those parties attempted to file such a response (with an accompanying motion for leave to file a response). See UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Furthermore, Minute Order No. 44 explicitly allowed parties to present objections that it could not have raised previously through a motion for reconsideration. See Minute Order No. 44 at 6 [Doc. 553].</p> <p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>
242.	39	When parties attempted to respond to the objections anyway, the Hearing Officer refused to review or consider such responses because they were "late." Order at 6 <i>citing</i> DOCs-515, 520, 521, and 525.	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Inaccurate/False Misrepresentation Estoppel/Improper Reconsideration Minute Order No. 44 explicitly allowed parties to present objections that it could not have raised previously through a motion for reconsideration. See Minute Order No. 44 at 6 [Doc. 553].</p>

243.	39	Responses to objections could not be "late" when there was no schedule for them to be filed in the first place.	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p> <p>Inaccurate/False – Minute Order No. 43 set March 16, 2017 as the deadline for responses and objections, but did not allow for parties to submit additional replies absent leave from the Hearing Officer. Therefore, pleadings that were styled as "responses" and "oppositions" filed after March 16, 2017 were properly disregarded as untimely. <i>See</i> Minute Order No. 44 at 6 [Doc 553].</p> <p>Estoppel/Improper Reconsideration</p> <p>Minute Order No. 44 explicitly allowed parties to present objections that it could not have raised previously through a motion for reconsideration. <i>See</i> Minute Order No. 44 at 6 [Doc. 553].</p> <p>The Temple filed such a motion, which was denied by the Hearing Officer. <i>See</i> Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>
244.	39	As a result of all these factors, the Hearing Officer made all decisions on admissibility of exhibits subject to objections without the sponsor of the exhibit having an opportunity to present an initial argument for admissibility of the specific exhibit objected to or to be heard in response to the objection. The Hearing Officer essentially ruled on objections without hearing from the sponsor of the exhibit objected to – the classic "cart before the horse" problem so familiar to this proceeding. <i>See Mauna Kea Anaina Hou v. Board of Land and Natural</i>	<p>Citation does not support proposition</p> <p>Unsupported/Unsubstantiated</p> <p>Inaccurate/False</p> <p>Mischaracterization</p> <p><i>See</i> UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599].</p>

<p><i>Resources</i>, 363 P.3d 224, (2015).</p>		<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple’s Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>
<p>245.</p>	<p>39</p> <p>Misleading parties into not establishing the admissibility of documents when the related witness was testifying was a due process violation.</p>	<p>Citation does not support proposition Unsupported/Unsubstantiated Inaccurate/False Mischaracterization See UH Hilo’s Opp to Temple’s Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599].</p>
<p>246.</p>	<p>40</p> <p>In light of FoF 10-17, the due process violation that led to the Hawai’i Supreme Court vacating the first BLNR approval of HA 3568 unalterably tainted the second contested case because the Hearing Officer in the second case also knew “BLNR’s position on the permit before the first witness[was] sworn in.” <i>Mauna Kea Anaina Hou</i>, <i>supra</i>. at 239.</p>	<p>Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple’s Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p> <p>Citation does not support proposition Misleading-Partial quotation Misleading-Presented out of context Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 46 [Doc. 595]; Minute Order No. 17 [Doc. 245]; Minute Order No. 9 [Doc. 63]; Minute Order No. 4 [Doc. 14]</p>

247.	40	<p>In a situation where the appearance of bias may be incurable, even by “the most elaborate procedural safeguards,” <i>Mauna Kea Anaina Hou</i>, supra. at 238 quoting <i>Sussel v. City & Cnty. of Honolulu Civil Serv. Comm’n</i>, 71 Haw. at 108, 784 P.2d at 870 (quoting M. Redish & L. Marshall, <i>Adjudicatory Independence and the Values of Procedural Due Process</i>, 95 Yale L.J. 455, 483-84 (1986)), the minimum burden on the agency is to demonstrate objectivity and fairness at a level that can withstand the strictest scrutiny.</p>	<p>Citation does not support proposition Misleading-Partial quotation Misleading-Presented out of context Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 46 [Doc. 595]; Minute Order No. 17 [Doc. 245]; Minute Order No. 9 [Doc. 63]; Minute Order No. 4 [Doc. 14]</p>
248.	40	<p>The Hearing Officer’s decision not to disqualify the legal counsel participating in the initial contested case, whose advice led to the due process violation found by the Supreme Court and who subsequently defended that violation, FoF 19-20, brings the neutrality of the Hearing Officer and the proceeding itself into question.</p>	<p>Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 38 [Doc. 389]; see generally UH Hilo’s Memo. in Opp. to Petitioners’ Mot. to Disqualify BLNR’s & Hearing Officer’s Counsel [Doc. 138]</p>
249.	40	<p>When both the proponents and the opponents agreed that the selected Hearing Officer should be removed based on potential bias and the BLNR refused to remove the Hearing Officer, the appearance of impropriety arose and the standard of strict scrutiny that should be applied in this proceeding to any rulings implicating due process makes the BLNR ruling a violation of due process.</p>	<p>Unsupported/Unsubstantiated Inaccurate/False Mischaracterization Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 46 [Doc. 595]; Minute Order No. 17 [Doc. 245]; Minute Order No. 9 [Doc. 63]; Minute Order No. 4 [Doc. 14]</p>
250.	40	<p>In a proceeding already tainted by a major prejudicial ruling, any ambiguity regarding whether a given action, such as the selection of the Hearing Officer, gave the appearance of bias should have been resolved towards not taking the action. Such a standard was not met in this</p>	<p>Unsupported/Unsubstantiated Inaccurate/False Mischaracterization Improper Gamesmanship/Distortion</p>

		proceeding.	Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 46 [Doc. 595]; Minute Order No. 17 [Doc. 245]; Minute Order No. 9 [Doc. 63]; Minute Order No. 4 [Doc. 14]
251.	40	Based on the refusal of BLNR to select an alternative Hearing Officer in the context of a case calling for heightened adherence to due process requirements, the entire proceeding must be invalidated.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Minute Order No. 46 [Doc. 595]; Minute Order No. 17 [Doc. 245]; Minute Order No. 9 [Doc. 63]; Minute Order No. 4 [Doc. 14]
252.	40	Legally, there simply was no cure for the taint created by the initial BLNR due procession violation of approving the permit prior to holding the contested case.	Unsupported/Unsubstantiated Inaccurate/False Specious and improper reasoning Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA
253.	40-41	For the BLNR to be considering both the question of whether to grant the Applicant's request for a permit to build the TMT and whether to adopt a new Master Lease, FoF 23-30, creates innumerable conflict of interest issues that compromise the integrity of the proceeding and raise serious due process issues.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA
254.	41	The BLNR should have decided whether to approve a new Master Lease before taking up a new permit application for the TMT project, which is intended to operate long after the current Master Lease expires.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA
255.	41	The BLNR decision on whether to approve a new Master Lease will be influenced by a prior approval of the TMT application because TMT may rely on an approved application to initiate construction, an attempt	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA

		TMT made before the Supreme Court invalidated the first permit.	no bearing on the merits of the CDUA
256.	41	The more TMT does pursuant to the premature permit, the greater the pressure on the BLNR to approve the new Master Lease.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA
257.	41	That pressure, particularly in this case where objectivity was an issue even before the contested case began, Fof 10-35, threatens to undermine the objectivity and credibility of any decision on whether to approve a new Master Lease.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA
258.	41	The BLNR committed a legal error by taking up the TMT application prior to deciding on whether to approve a new Master Lease.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA
259.	41	That error violated the due process rights of those opposed to the TMT by forcing them into a contested case before the BLNR had decided on whether to approve a new Master Lease because a decision not to approve a new Master Lease would have led to TMT terminating their application and obviated the need for a contested case.	Unsupported/Unsubstantiated Inaccurate/False Not in evidence Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA
260.	41	By taking up the TMT application before approving the new Master Lease, the BLNR signaled to TMT and the Hearing Officer that the BLNR has already decided to approve a new Master Lease to accommodate TMT.	Unsupported/Unsubstantiated Inaccurate/False Not in evidence Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA
261.	41	This latest “cart before the horse” violated the due process rights of TMT opponents because the BLNR created pressure upon itself to approve the new Master Lease, compromising an objective decision on the new Master Lease.	Unsupported/Unsubstantiated Inaccurate/False Not in evidence Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA
262.	41	Consideration of the TMT application should be suspended until such time as the BLNR decides whether to approve a new Master Lease or not.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA

263.	41	By treating the second contested case hearing process as both a resumption of the initial contested case and a new proceeding, FoF 36-56, the BLNR and the Hearing Officer admitted parties based on two separate criteria – those requesting a contested case the first (and only) time that option was offered and those seeking to intervene in an existing case.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1.
264.	42	The rules do not permit both avenues to become a party.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1.
265.	42	This proceeding has, therefore, been a hybrid that is no where supported by the rules.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1.
266.	42	The conflation of a resumed contested case and a new contested case invalidates the proceeding.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See <i>supra</i> at B-10, n.1.
267.	42	The procedural history of the Temple's efforts to have the merits of the Temple's argument regarding the application of the desecration statute to this proceeding, FoF 1-9; 57-72, constituted a violation of the Temple's due process rights.	Irrelevant/Inapplicable Lack Jurisdiction Estoppel/Improper Reconsideration See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; see <i>also</i> UH Hilo's Opp. to the Temple's Mot. for Summ. J. (Disqualification), filed Sept. 17, 2016 at 7 [Doc. 263]; UH-TIO COL 392-394.

268.	42	<p>The refusal of the Hearing Officer to rule on the Temple's motion for summary judgment based on the desecration law, DOC-264, denied the Temple's due process right to be heard at "a meaningful time and in a meaningful manner." <i>Mauna Kea Anaina Hou</i>, supra. at 228 quoting <i>Sandy Beach Def. Fund v. City & Cnty. of Honolulu</i>, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989).</p>	<p>There is no credible evidence of desecration. UH-TIO COL 395-407.</p> <p>Irrelevant/Inapplicable Lack Jurisdiction Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Desecration) [Doc. 264]; Minute Order No. 53 [Doc. 654]; see also Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p>
269.	42	<p>The refusal of the BLNR to rule on the Temple's motion to dismiss based on the desecration law, DOC-516, denied the Temple's due process right to be heard at "a meaningful time and in a meaningful manner." <i>Mauna Kea Anaina Hou</i>, supra. at 228 quoting <i>Sandy Beach Def. Fund v. City & Cnty. of Honolulu</i>, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989).</p>	<p>There is no credible evidence of desecration. UH-TIO COL 395-407.</p> <p>Irrelevant/Inapplicable Lack Jurisdiction Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Desecration) [Doc. 264]; Minute Order No. 53 [Doc. 654]; see also Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p>
270.	42	<p>The evidence is overwhelming that Mauna Kea is a place of worship. See e.g. FoF 73-93.</p>	<p>There is no credible evidence of desecration. UH-TIO COL 395-407.</p> <p>Lack Jurisdiction Vague/Ambiguous/Overbroad Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Desecration) [Doc. 264]; Minute Order No. 53 [Doc. 654]; see also Temple's</p>

271.		<p>Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-395.</p> <p>There is no credible evidence of desecration. UH-TIO COL 395-407.</p> <p>Lack Jurisdiction</p> <p>Estoppel/Improper Reconsideration Vague/Ambiguous/Overbroad</p> <p>See Temple's Mot. for Summ. J. (Desecration) [Doc. 264]; Minute Order No. 53 [Doc. 654]; <i>see also</i> Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>There is no credible evidence of desecration. UH-TIO COL 395-407.</p> <p>There are no known burials or funerary relics of any significance found or located within the TMT Project site and no proof of any related ongoing cultural or historical practice of any significance. Ex. C-11 (WDT Rechtman); Tr. 2/21/17 at 147:2-12; Tr. 12/05/16 at 217:18-23; 211:13-16; <i>see</i> UH-TIO FOF 627, 674-676, 703, 758.</p>
42	<p>The uncontested evidence demonstrates that Mauna Kea is a place of burials. <u>See e.g.</u> FoF 94-107.</p>	<p>Lack of Jurisdiction,</p> <p>Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this COL is intended to support the Temple's desecration claims. <i>See</i> Minute Order</p>
272.	<p>43</p> <p>The uncontested evidence demonstrates that Mauna Kea is an object of veneration. <u>See e.g.</u> FoF 108-111.</p>	

<p>No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>There is no credible evidence of desecration. UH-TIO COL 395-407.</p> <p>There is no single native Hawaiian viewpoint or opinion on any subject. Practices and beliefs are personal and vary among practitioners. See UH-TIO FOF 641-642, 740, 744.</p>		
<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this COL is intended to support the Temple's desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>Whether or not an area is pristine is not the standard for the evaluation of a CDUA. The University has shown that it considered all eight criteria applicable to its CDUA, and that the TMT Project complies with the purpose of the Conservation District, as set forth in the applicable authorities. See UH-TIO FOF 381-382; see <i>generally</i> UH-TIO COL 128-385. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).</p> <p>Moreover, there are already 11</p>	<p>The uncontested evidence is that the construction of the Thirty Meter Telescope will damage the pristine site where construction is proposed. See <u>e.g.</u> FoF 116-114.</p>	<p>273.</p> <p>43</p>

<p>observatories on Mauna Kea within the Astronomy Precinct. Witnesses for the Petitioners and Opposing Intervenor admitted that the summit area was already substantially developed for astronomy use. UH-TIO FOF 859-866.</p> <p>The subzone specifically allows for the permitted approval of astronomy observatories, which obviously involves construction activities and disturbance of existing ground.</p>		
<p>Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this COL is intended to support the Temple's desecration claims. See Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.</p> <p>The fact that certain individuals oppose the TMT Project, without more, is insufficient reason for denial of a CDUP. See UH-TIO COL 360-382.</p> <p>The record shows that the TMT Project satisfies the eight criteria under HAR § 13-5-30(c) or the BLNR's constitutional obligations. See <i>generally</i>, UH-TIO FOF 344-1014; UH-TIO COL 128-385. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in</p>	<p>The evidence demonstrates that the Applicant knew the project would cause outrage. See e.g. FoF 117-119.</p>	
<p>274.</p>	<p>43</p>	

275.	43	The evidence demonstrates that the project did cause significant public outrage. <u>See e.g.</u> FoF 120-123.	HAR § 13-5-30(c). Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this COL is intended to support the Temple's desecration claims. <i>See</i> Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394. The fact that certain individuals oppose the TMT Project, without more, is insufficient reason for denial of a CDUP. <i>See</i> UH-TIO COL 360-382. The record shows that the TMT Project satisfies the eight criteria under HAR § 13-5-30(c) or the BLNR's constitutional obligations. <i>See generally</i> , UH-TIO FOF 344-1014; UH-TIO COL 128-385. The Temple's FOF/COL do not dispute that the CDUA satisfies the eight criteria in HAR § 13-5-30(c).
276.	43	Because the application at issue in this proceeding is requesting permission to violate State law, FoF 73-123, the application must be dismissed or denied.	Unsupported/Unsubstantiated Inaccurate/False Lack of Jurisdiction, Estoppel/Improper Reconsideration and Irrelevant/Inapplicable to the extent this COL is intended to support the Temple's desecration claims. <i>See</i> Minute Order No. 53 [Doc. 654]; Minute Order No. 19 [Doc. 281]; UH-TIO COL 392-394.

277.	43	<p>Hawai'i State Constitution, Article I, § 5: No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.</p>	<p>There is no credible evidence of desecration. UH-TIO COL 392-407.</p> <p>Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA</p> <p>UH Hilo and TIO do not dispute that Article 1, section 5 of the Hawai'i State Constitution contains the quoted language.</p>
278.	43	<p>As a general proposition, this constitutional provision requires due process in contested case proceedings because those proceedings determine rights.</p>	<p>Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA</p> <p>UH Hilo and TIO do not dispute that Article 1, section 5 of the Hawai'i State Constitution relates to due process.</p> <p>Not in dispute</p>
279.	43	<p>Due process includes the right to be heard at "a meaningful time and in a meaningful manner." <i>Mauna Kea Anaina Hou</i>, supra. at 228 quoting <i>Sandy Beach Def. Fund v. City & Cnty. of Honolulu</i>, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989).</p>	<p>Not in dispute</p>
280.	43	<p>The equal protection of the laws also applies to guarantee each party to the contested case the same rights as any other party in terms of participating in the proceeding.</p>	<p>Not in dispute</p>
281.	44	<p>The ban on discrimination in this proceeding means that the Temple is guaranteed that the proceeding will not discriminate based on faith.</p>	<p>Unsupported/Unsubstantiated to the extent this COL alleges discrimination against the Temple</p> <p>Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA</p> <p>Estoppel/Improper Reconsideration-both the Hearing Officer and the BLNR have repeatedly rejected the Temple's allegations of bias. See, e.g., Minute</p>

282.	44	The episode of the Applicant's attack on the Temple and the subsequent Hearing Officer's actions protecting the Applicant from the legal consequences of that attack defy any requirements for due process.	Order No. 51 at 6-7 [Doc. 609]; Minute Order No. 46 [Doc. 595]; Minute Order No. 17 [Doc. 245]; Minute Order No. 9 [Doc. 63]; Minute Order No. 4 [Doc. 14].
283.	44	This one episode includes multiple violations of the Temple's due process rights.	Misrepresentation Unsupported/Unsubstantiated Inaccurate/False Vague/Ambiguous/Specious Reasoning Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]
284.	44	As this proceeding deals with a Conservation District Use Application, the Applicant bears the burden of proof, including on any challenge to the Applicant's character. HAR § 13-5-30.	Misrepresentation Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]
284.	44	As this proceeding deals with a Conservation District Use Application, the Applicant bears the burden of proof, including on any challenge to the Applicant's character. HAR § 13-5-30.	Unsupported/Unsubstantiated Inaccurate/False Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]

285.	44	<p>In <i>N.M. Ranchers Ass'n v. ICC</i>, 702 F.2d 227 (D.C. Cir. 1983) (per curiam), the court remanded an Interstate Commerce Commission (ICC) decision to grant a permit for a railroad line. The court found that the ICC erred in failing to consider evidence of bad faith tending to show that the rail line developer would not fulfill its promises to preserve sacred and historical Native American sites along the right-of-way. <i>Id.</i> at 232-33.</p>	<p>Irrelevant/Inapplicable Estoppel/Reconsideration See Minute Order No. 47 at 5 [Doc. 609] (holding, <i>inter alia</i>, that “[t]he ICC case and this contested case hearing are incomparable”); see also UH Hilo’s Opp. to Temple’s Mot. for Recon. Minute Order 47 at 3-4 [Doc. 641].</p>
286.	44	<p>In this case, the Applicant made character an issue by its attack on the Temple’s character. DOC-135 at 14-15.</p>	<p>Citation does not support proposition Inaccurate/False Misrepresentation Vague/Ambiguous/Specious Reasoning Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple’s Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple’s Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]</p>
287.	44	<p>The Temple of Lono is not the party seeking a permit. The Temple’s character is totally irrelevant to the issues in the contested case. The testimony and exhibits presented in the case by the Temple will be judged on their merits, not by who submitted them.</p>	<p>Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA UH Hilo and TIO do not dispute that the Temple is not seeking a CDUP. Nor do they dispute that the Hearing Officer has properly judged the Temple’s testimony and exhibits on their merits, and not by who submitted them. As with all parties and witnesses, however, the Temple’s credibility may be considered by the Hearing Officer. The complete exclusionary stance taken by the Temple</p>

288.		to reject construction of the TMT Project based on its own claimed religious beliefs, demonstrates its lack of objectivity and tolerance for scientific or other potentially co-existing pursuits.
44	The Applicant's decision to impugn the Temple's character was, therefore, gratuitous.	Unsupported/Unsubstantiated Inaccurate/False Mischaracterization Vague/Ambiguous/Specious Reasoning Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]
289.	Even assuming that the attack would somehow be relevant, the Applicant offered no supporting evidence for the attack.	Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Mischaracterization as to "attack" Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]
290.	The <i>ad hominem</i> attack, however, did raise a serious question about the Applicant's qualifications to receive a permit from the State of Hawai'i.	Unsupported/Unsubstantiated Inaccurate/False Mischaracterization as to "attack" Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA

291.		<p>Actions on the part of the Applicant demonstrating disrespect for constitutional obligations towards Native Hawaiians that would accompany any grant of a permit are relevant to the question of whether the application should be granted.</p>	<p>Estoppel/Improper Reconsideration <i>See</i> Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]</p> <p>Unsupported/Unsubstantiated Inaccurate/False Out of Context and Specious reasoning Mischaracterization as to "attack" Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration <i>See</i> Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]</p>
292.	44	<p>The issue of Native Hawaiian rights is specifically an issue in this proceeding. DOC-281 at 4.</p>	<p>Mischaracterization. Minute Order No. 19 speaks for itself on the issues to consider for this proceeding.</p> <p>Unsupported/Unsubstantiated Inaccurate/False Mischaracterization</p>
293.	45	<p>The Temple's claim that the attack by the Applicant disqualified the Applicant from receiving a permit never had the opportunity to have a ruling on the merits of that claim.</p>	<p>Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration <i>See</i> Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]</p>

294.	45	<p>The absence of a ruling on the merits of the Temple's disqualification claim meant that the Temple never had an opportunity to file a motion for reconsideration of an adverse ruling, had that been the outcome.</p>	<p>Unsupported/Unsubstantiated Inaccurate/False Mischaracterization Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA The Hearing Officer is under no obligation to take up untimely filed motions on issues that are not properly before her. See Minute Order No. 13 at 6 (setting pre-hearing motions deadline of July 18, 2016) [Doc. 115]; HAR § 13-1-32(c); Minute Order. No. 19 (setting the issues, which do not include “character”); see <i>also</i> Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”).</p> <p>Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]</p>
295.	45	<p>The facts presented document that the Board and the Hearing Officer have engaged in a systematic effort to prevent the Temple of Lono from having an opportunity to argue that the attack on the Temple disqualifies the Applicant from receiving the permit at issue in this proceeding.</p>	<p>Unsupported/Unsubstantiated Inaccurate/False Mischaracterization Vague/Ambiguous/Specious Reasoning Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA</p>

<p>Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]</p>		
<p>Unsupported/Unsubstantiated Inaccurate/False Mischaracterization Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA The Hearing Officer is under no obligation to take up untimely filed motions. See Minute Order No. 13 at 6 (setting pre-hearing motions deadline of July 18, 2016) [Doc. 115]; HAR § 13-1-32(c).</p>	<p>Denying the Temple an opportunity to be heard on the disqualification issue amounted to a ruling denying the Temple's disqualification motion without a written or oral order, which in turn precluded the Temple from exercising its right to request reconsideration.</p>	
<p>Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281]</p>	<p>Denying the Temple's right to be heard violated the Temple's due process rights as a party to this proceeding.</p>	

<p>Minute Order No. 50 at 13-14 (denying the Temple's renewed due process arguments) [Doc. 646].</p>		
<p>Unsupported/Unsubstantiated Inaccurate/False Mischaracterization Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA The Hearing Officer is under no obligation to take up untimely filed motions. See Minute Order No. 13 at 6 (setting pre-hearing motions deadline of July 18, 2016) [Doc. 115]; HAR § 13-1-32(c).</p> <p>Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; see also Minute Order No. 50 at 13-14 (denying the Temple's renewed due process arguments) [Doc. 646].</p> <p>The BLNR has ruled that the absence of a ruling does not constitute bias. See Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p>	<p>A separate violation of the Temple's due process rights was the Hearing Officer's refusal to even take up Temple motions or other filings related to the University attack.</p>	<p>45</p>
<p>298.</p>		

299.	45	<p>The Hearing Officer's refusal to take up Temple motions also denied the Temple an opportunity to avail itself of the protections offered by the rules on filing motions for reconsideration. HAR §13-1-39. Denial of that opportunity is a further violation of the Temple's due process rights.</p>	<p>Unsupported/Unsubstantiated Inaccurate/False Mischaracterization Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; see also Minute Order No. 50 at 13-14 (denying the Temple's renewed due process arguments) [Doc. 646].</p> <p>The BLNR has ruled that the absence of a ruling does not constitute bias. See Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p> <p>Irrelevant/Inapplicable. See Minute Order No. 19 [Doc. 281]. Estoppel/Improper Reconsideration</p> <p>Neither the Temple nor its representative objected to the Hearing Officer's ruling at any point prior to the close of the hearing.</p> <p>Irrelevant/Inapplicable. See Minute Order No. 19 [Doc. 281]. Estoppel/Improper Reconsideration</p>
300.	45	<p>A separate violation of the Temple's due process rights is the Hearing Officer's refusing to allow the Temple to call a witness capable of testifying to the University's policy and attitudes toward the traditional Hawaiian faith.</p>	
301.	45	<p>A related due process violation is the failure of the Hearing Officer to ever issue an order denying the request for a subpoena. The absence of such an order denied the Temple an opportunity to file a motion for</p>	

		reconsideration. Denial of that opportunity is a further violation of the Temple's due process rights.		Neither the Temple nor its representative objected to the Hearing Officer's ruling at any point prior to the close of the hearing.
302.	45	The Hearing Officers ruling that the testimony of the witness was not relevant and material constituted a ruling that the Applicant's character is not a relevant issue to a permit application. That position is legally incorrect.		Unsupported/Unsubstantiated Inaccurate/False Estoppel/Improper Reconsideration See Minute Order No. 19 [Doc. 281]
303.	46	If there was evidence that the Applicant tolerated acts of desecration without taking, or initiating through others, any enforcement action, that evidence would be relevant and material as further proof of bad character.		Irrelevant/Inapplicable Unsupported/Unsubstantiated
304.	46	Animosity towards the traditional Hawaiian faith is evidence of a propensity toward acts damaging to that faith. Whether the evidence of that animosity constituted a general policy of the Applicant is a matter that should have been litigated, either by allowing the issue to be briefed and decided and/or allowing the Temple to call witnesses competent to illuminate University policy.		Irrelevant/Inapplicable Unsupported/Unsubstantiated Inaccurate/False
305.	46	The compilation of errors and constitutional violations in this proceeding leaves no option other than vacating the proceeding.		Unsupported/Unsubstantiated Inaccurate/False Mischaracterization
306.	46	The combination of denying the Temple's right to be heard on the material and significant issue of disqualification; the refusal to take up motions filed by the Temple, including a motion to recuse the Hearing Officer; the failure to provide final orders enabling the Temple to file motions for reconsideration; the failure to provide reasoned explanations for orders that were issued, again denying the Temple's right to file motions for reconsideration; and the repeated refusal to respond to the Temple's efforts to bring these matters to the attention of the Hearing Officer, support finding that the Hearing Officer demonstrated a bias against the Temple and in favor of the Applicant and erred in not recusing herself.		Unsupported/Unsubstantiated Inaccurate/False Mischaracterization Irrational and Specious reasoning

307.	46	The fact that the permit comes with conditions that the Applicant must obey, there is an implicit requirement that the Applicant be considered likely to obey those conditions.	Unsupported/Unsubstantiated
308.	46	The applicable laws, rules, regulations, and related constraints involved in the permit require the Applicant to comply with those constraints. To the extent that the Applicant demonstrates disrespect for those constraints, the Applicant is disqualified from receiving the permit. Here the protections afforded to Native Hawaiians, including their spiritual practices, are a requirement that accompanies the permit. As such, the granting agency must have confidence that the Applicant will observe and respect those protections. The unsupported and bigoted attack on the Temple is evidence demonstrating that the Applicant is unlikely to comply with those requirements. As the court found in <i>N.M. Ranchers Ass'n, supra</i> , evidence of bad behavior is relevant and should have been considered.	Unsupported/Unsubstantiated Citation does not support proposition Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609].
309.	46-47	As found by the Hawai'i Supreme Court: Under such facts, the role of an agency is not merely to be a passive actor or a neutral umpire, and its duties are not fulfilled simply by providing a level playing field for the parties. <i>See Save Ourselves, Inc.</i> , 452 So.2d at 1157 (“[T]he commission's role as the representative of the public interest does not permit it to act as an umpire passively calling balls and strikes for adversaries appearing before it.”). Rather, an agency of the State, must perform its statutory function in a manner that fulfills the State's affirmative constitutional obligations. <i>See, e.g., Ka Pa'akai O Ka'Aina</i> , 94 Hawai'i at 45, 7 P.3d at 1082 (placing “an affirmative duty on the State and its agencies to preserve and protect traditional and, customary native Hawaiian rights”); <i>In re Water Use Permit Applications (Waiahole I)</i> , 94 Haw. 97, 143, 9 P.3d 409, 456 (2000) (describing the state agency's affirmative duty of “considering,	Misleading. Presented out of context. To the extent this proposed COL is intended to support a finding that DLNR and BLNR did not fulfill their duties and functions under applicable law, such a finding is unsupported and unsubstantiated by the record. There is no reliable probative and substantial evidence that Temple's or the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.

		<p>protecting, and advancing public rights in the resource at every stage of the planning and decision-making process"). In particular, an agency must fashion procedures that are commensurate to the constitutional stature of the rights involved, <i>see, e.g., Waiahole I</i>, 94 Hawai'i at 143, 9 P.3d at 455 (decisions involving public rights to a public-trust resource must be "made with a level of openness, diligence, and foresight commensurate with the high priority these rights command under the laws of our state"), and procedures that would provide a framework for the agency to discover the full implications of an action or decision before approving or denying it, <i>see, e.g., Kauai Springs, Inc. v. Planning Comm'n of Kaula</i> i, 133 Haw. 141, 174-75, 324 P.3d 951, 984-85 (2014) (crafting an assistive framework that can guide agencies when considering the application of the public trust doctrine to water resources).</p> <p><i>Mauna Kea Anaina Hou</i>, <u>supra</u>. at 262.</p>	
310.	47	<p>The Supreme Court also ruled: In light of the unique position that an agency occupies, the agency may be at the frontline of deciding issues that involve various interests that implicate constitutional rights. Especially in instances where an agency acts or decides matters over which it has exclusive original jurisdiction, that agency is the primary entity that can and, therefore, should consider and honor state constitutional rights in the course of fulfilling its duties. Furthermore, to the extent possible, an agency must execute its statutory duties in a manner that fulfills the State's affirmative obligations under the</p>	<p>Misleading. Presented out of context.</p> <p>To the extent this proposed COL is intended to support a finding that DLNR and BLNR did not fulfill their duties and functions under applicable law, such a finding is unsupported and unsubstantiated by the record.</p>

	<p>Hawai'i Constitution. An agency is not at liberty to abdicate its duty to uphold and enforce rights guaranteed by the Hawai'i Constitution when such rights are implicated by an agency action or decision.</p> <p><u>Ibid.</u> at 262-263 (emphasis added).</p>		
311.	<p>Furthermore, the Court ruled: the agency must not only avoid infringing upon protected rights to the extent feasible, but it also must execute its statutory duties in a manner that fulfills the State's affirmative constitutional obligations.</p> <p><u>Ibid.</u> at 261.</p>	47	<p>Misleading. Presented out of context.</p> <p>To the extent this proposed COL is intended to support a finding that DLNR and BLNR did not fulfill their duties and functions under applicable law, such a finding is unsupported and unsubstantiated by the record.</p>
312.	<p>The Supreme Court stressed the importance of the agency fulfilling its constitutional duties.</p> <p>In other words, the authority and obligations of an agency are necessarily circumscribed and regulated by the Hawai'i Constitution. See <i>Czerkies v. U.S. Dept of Labor</i>, 73 F.3d 1435, 1441-42 (7th Cir.1996) (stating that “an administrative agency [may not] claim to receive from Congress by sheer inadvertence a license to ignore the Constitution”); <i>Hennessey v. Indep. Sch. Dist. No. 4</i>, 552 P.2d 1141, 1145 (Okla.1976) (“All governmental bodies must remain within bounds of the Constitution.”); <i>City of Modesto v. Modesto Irrigation Dist.</i>, 34 Cal.App.3d 504, 110 Cal.Rptr. 111, 114 (1973) (holding that state agencies “must submit to a constitutional mandate”). Hence, an agency may not fulfill its statutory duties without reference to and application of the rights and values embodied in the constitution.</p> <p><u>Id.</u></p>	47-48	<p>Misleading. Presented out of context.</p> <p>To the extent this proposed COL is intended to support a finding that DLNR and BLNR did not fulfill their duties and functions under applicable law, such a finding is unsupported and unsubstantiated by the record.</p>

313.	48	<p>In this case, the agency's action will directly affect the rights of the Temple and other spiritual practitioners and, therefore, must act in a manner that protects those rights.</p> <p>Consequently, an agency bears a significant responsibility of assuring that its actions and decisions honor the constitutional rights of those directly affected by its decisions.</p> <p><u>Ibid.</u> at 262:</p>	<p>Misleading. Presented out of context.</p> <p>To the extent this proposed COL is intended to support a finding that DLNR and BLNR did not fulfill their duties and functions under applicable law, such a finding is unsupported and unsubstantiated by the record.</p> <p>There is no reliable probative and substantial evidence that the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p>
314.	48	<p>The agency has failed to live up to its responsibilities.</p>	<p>False/Inaccurate. Unsupported/Unsubstantiated See UH-TIO COL 294-385</p> <p>There is no reliable probative and substantial evidence that Temple's or the referenced practices are within the bundle of rights protected by Article XII, Section 7 of the Hawaii State Constitution.</p>
315.	48	<p>The multiple due process violations just related to the Temple's efforts to be heard on the disqualification issue cannot be cured and require vacating this proceeding.</p>	<p>False/Inaccurate Unsupported/Unsubstantiated Irrational and Specious Reasoning Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA</p>
316.	48	<p>Setting a deadline for the submission of proposed decisions and orders, including findings of fact and conclusions of law before the record was complete violated HAR §13-1-38(a).</p>	<p>False/Inaccurate Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA</p>

<p>317.</p>	<p>The violation of HAR §13-1-38(a) violated the parties' due process rights by requiring the completion of the findings and conclusions based on an incomplete record.</p>	<p>False/Inaccurate Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>	<p>Estoppel/Improper Reconsideration See Temple's Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>
<p>318.</p>	<p>The Hearing Officer set up a process for admitting exhibits into evidence that violated the due process rights of the parties.</p>	<p>Inaccurate/False Misrepresentation Unsupported/Unsubstantiated. See UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>	<p>Inaccurate/False Misrepresentation See UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599].</p>
<p>319.</p>	<p>The Hearing Officer repeatedly expressed her intent to allow all exhibits to be entered into evidence with the expectation that there would be few objections.</p>	<p>Unsupported/Unsubstantiated. Misrepresentation See UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order</p>	<p>Unsupported/Unsubstantiated. Misrepresentation See UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order</p>

320.	49	Based on this intent, the Hearing Officer foreclosed any attempt by parties to have exhibits admitted into evidence while the witness associated with the exhibits was testifying.	No. 51 [Doc. 647]. Unsupported/Unsubstantiated. Misrepresentation See UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].
321.	49	As a result, the parties did not make a record on the admissibility of their exhibits while the associated witness was testifying.	Unsupported/Unsubstantiated. Misrepresentation See UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].
322.	49	Also as a result, the parties filed motions to admit their exhibits into evidence that were <i>pro forma</i> in nature, rather than arguing for the admissibility of specific exhibits.	Unsupported/Unsubstantiated. Misrepresentation See UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Inaccurate/False Irrelevant/Inapplicable – This COL has

<p>no bearing on the merits of the CDUA Estoppel/Improper Reconsideration <i>See</i> Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>			
<p>Unsupported/Unsubstantiated. Misrepresentation Inaccurate/False Minute Order No. 44 explicitly allowed parties to present objections that it could not have raised previously through a motion for reconsideration. <i>See</i> Minute Order No. 44 at 6 [Doc. 553].</p> <p>Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration <i>See</i> Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>	<p>When the Applicant and TIO then filed hundreds of objections, the Hearing Officer erroneously decided those objections without allowing the sponsor of a challenged exhibit an opportunity to respond to the objection.</p>	<p>49</p>	<p>323.</p>
<p>Unsupported/Unsubstantiated. Misrepresentation Irrational and Specious Reasoning <i>See</i> UH Hilo's Opp to Temple's Mot. for Recon. of Minute Order 44 at 4-5 [Doc. 599]. Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration <i>See</i> Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>	<p>Misleading parties into not establishing the admissibility of documents when the related witness was testifying was a due process violation.</p>	<p>49</p>	<p>324.</p>

325.	49	Not providing the exhibit sponsors time to respond to objections prior to the Hearing Officer ruling on the objections was another due process violation.	<p>Unsupported/Unsubstantiated. Misrepresentation Inaccurate/False Minute Order No. 44 explicitly allowed parties to present objections that it could not have raised previously through a motion for reconsideration. <i>See</i> Minute Order No. 44 at 6 [Doc. 553].</p> <p>Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration <i>See</i> Temple’s Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>
326.	49	Relegating all objection responses to objections to the reconsideration process denied those now responding the opportunity to present arguments for <u>reconsideration</u> of an initial order based on a process in which all parties participated. That denial is another due process violation.	<p>Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration. The Temple waived this argument by failing to raise it in its motion for reconsideration of Minute Order No. 44. <i>See</i> Temple’s Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p>
327.	49	Relegating all objection responses to the reconsideration process meant that the sponsors of challenged exhibits had to defend the admissibility of their exhibits without having an opportunity to develop a record supporting admissibility in the first place and without having an opportunity to respond to objections prior to an initial ruling. This combination of due process violations constituted a separate due process	<p>Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration. The</p>

328.	49	<p>violation.</p> <p>Entering a post-hearing ruling denying the Temple of Lono's motion to recuse the Hearing Officer, filed more than seven months previously, violated the Temple's due process right to a timely ruling. Minute Order 46; see DOC-610 (Temple of Lono motion to reconsider Minute Order 46).</p>	<p>Temple waived this argument by failing to raise it in its motion for reconsideration of Minute Order No. 44. See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p> <p>Inaccurate/False</p> <p>Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Citation does not support proposition See Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p> <p>Estoppel/Improper Reconsideration</p> <p>The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. See, e.g., Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p> <p>Citation does not support proposition</p> <p>Inaccurate/False</p>
329.	49	<p>Entering a post-hearing ruling denying the Temple of Lono's motion to recuse the Hearing Officer denied the Temple's due process right to a</p>	<p>Temple waived this argument by failing to raise it in its motion for reconsideration of Minute Order No. 44. See Temple's Mot. for Recon of Minute Order No. 44 [Doc. 569]; Minute Order No. 51 [Doc. 647].</p> <p>Inaccurate/False</p> <p>Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Citation does not support proposition See Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p> <p>Estoppel/Improper Reconsideration</p> <p>The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. See, e.g., Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p> <p>Citation does not support proposition</p> <p>Inaccurate/False</p>

	<p>fair and objective proceeding because the Hearing Officer could not objectively choose between granting the motion, meaning she should have ceased to preside over the contested case seven months before, or denying the motion to prevent the vacating of the proceeding since the time the motion was filed. <u>Id.</u></p>	<p>Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Vague and Specious Reasoning See Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p> <p>It is improper for the Temple to claim a due process violation arising out of the Hearing Officer’s issuance of rulings on pending motions, <u>as the Temple repeatedly requested</u>. See, e.g., Temple’s Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; <i>Temple of Lono: Unresolved Matters</i> [Doc. 371]; Temple’s Motion to Schedule Pending Motions [Doc. 324].</p>
330.	<p>Entering a post-hearing ruling denying the Temple of Lono’s motion for a summary judgment on the issue of whether the Applicant was disqualified from receiving the permit, filed more than seven months previously, violated the Temple’s due process right to a timely ruling. Minute Order 47; see DOC-619 (Temple of Lono motion for reconsideration of Minute Order 47).</p>	<p>Citation does not support proposition Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA See Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p>

<p>It is improper for the Temple to claim a due process violation arising out of the Hearing Officer's issuance of rulings on pending motions, <u>as the Temple repeatedly requested</u>. See, e.g., Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; <i>Temple of Lono: Unresolved Matters</i> [Doc. 371]; Temple's Motion to Schedule Pending Motions [Doc. 324].</p>		
<p>Citation does not support proposition Inaccurate/False Irrelevant/Inapplicable -- This COL has no bearing on the merits of the CDUA See Minute Order No. 39 at 3 [Doc. 406] ("No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.") It is improper for the Temple to claim a due process violation arising out of the Hearing Officer's issuance of rulings on pending motions, <u>as the Temple repeatedly requested</u>. See, e.g., Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; <i>Temple of Lono: Unresolved Matters</i> [Doc. 371]; Temple's Motion to Schedule Pending</p>	<p>Entering a post-hearing ruling denying the Temple of Lono's motion for a summary judgment on the issue of whether the Applicant was disqualified from receiving the permit denied the Temple's due process right to a fair and objective proceeding because the Hearing Officer could not objectively choose between granting the motion, meaning the proceeding should have been terminated seven months prior, or denying the motion to prevent the vacating of the proceeding. <i>Id.</i></p>	<p>50</p>

Motions [Doc. 324].		
<p>Citation does not support proposition Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA</p> <p>See Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”)</p> <p>It is improper for the Temple to claim a due process violation arising out of the Hearing Officer’s issuance of rulings on pending motions, as the Temple repeatedly requested. See, e.g., Temple’s Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; <i>Temple of Lono: Unresolved Matters</i> [Doc. 371]; Temple’s Motion to Schedule Pending Motions [Doc. 324].</p>	<p>Choosing to enter orders on two motions filed more than seven months ago, Minute Orders 46 and 47, while not entering orders on two other motions filed at the same time or shortly thereafter is capricious and arbitrary. See DOC-264 (Temple of Lono motion for summary judgment (desecration), filed September 17, 2016; DOC-286 (Temple of Lono motion for reasoned explanations and extension of time) filed September 26, 2016.</p>	
<p>Citation does not support proposition Inaccurate/False Unsupported / Unsubstantiated</p>	<p>The innumerable violations of the Temple’s (and other parties’) due process rights, see e.g. FoF 193-244, constitutionally require invalidating this proceeding.</p>	50
<p>Lack of Jurisdiction Unsupported/Unsubstantiated Inaccurate/False. Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA</p>	<p>Given that the objectivity of this proceeding was compromised from the beginning and that there was really nothing the BLNR could do to correct that taint, the Hearing Officer finds that the process initiated by the BLNR in response to the Supreme Court ruling in this case did not meet the constitutional tests for due process.</p>	50

335.	50	Given that the proposed project would violate the state law on desecration, the Hearing Officer recommends that the BLNR deny or dismiss the CDUA (HA 3568).	Lack of Jurisdiction Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable
336.	50	Given that the BLNR initiated this proceeding because BLNR violated the due process rights of those opposed to the application and given that the conduct of this proceeding including numerous similar violations of due process rights of the application opponents, the Hearing Officer recommends to the BLNR that this proceeding be vacated as defective based on the conduct of the proceeding.	Lack of Jurisdiction Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA
337.	51	Based on the entire record, the Hearing Officer recommends that BLNR order the CDUA in this proceeding be dismissed or denied.	Unsupported/Unsubstantiated See UH-TIO COL 126-482
SuppA-1	1	On April 18, 2017, the Hearing Officer filed Minute Order 43 setting a deadline of May 30, 2017 for the filing of proposed decisions and orders, including findings of fact and conclusions of law. DOC-552.	Not in Dispute
SuppA-2	1	On April 20, 2017, the Hearing Officer subsequently filed Minute Order 44 ruling on the admissibility of documentary evidence. DOC-553.	Not in Dispute
SuppA-3	1	Minute Order 44 is a 62 page document addressing objections to the admissibility of exhibits. <u>Id.</u>	Mischaracterization. Minute Order No. 44 speaks for itself. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA
SuppA-4	1	On April 25, 2017, the Temple of Lono filed a motion to reconsider Minute Order 43 based on the fact that the applicable rule provided for scheduling the findings and conclusions after the record was complete and the record was not complete. DOC-559.	Mischaracterization. Doc. 559 speaks for itself. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA UH Hilo and TIO do not dispute that the Temple filed a Motion for Reconsideration of Minute Order 43, which was denied by the Hearing Officer. See [Docs. 559 and 646].

SuppA-5	1	On April 26, 2017, the Temple also filed a motion to reconsider Minute Order 44 based on <i>inter alia</i> the entire process for admitting exhibits constituting a violation of the due process rights of the parties. DOC-569.	Mischaracterization. Doc. 569 speaks for itself. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA UH Hilo and TIO do not dispute that the Temple filed a Motion for Reconsideration of Minute Order 44, which was denied by the Hearing Officer. See [Docs. 569 and 647].
SuppA-6	1	On May 23, 2017, the Temple of Lono filed its proposed decisions and orders, including findings of fact and conclusions of law. DOC-651.	Not in Dispute
SuppA-7	1	On May 25, 2017, the Hearing Officer filed Minute Order No. 51 amending Minute Order 44 and granting in part and denying in part motions for reconsideration of Minute Order 44. DOC-647.	Not in Dispute
SuppA-8	1	On May 26, 2017, the Hearing Officer filed Amended Minute Order 44. DOC-649.	Not in Dispute
SuppA-1	1	DOCs-553, 647, and 649 confirm that the record was incomplete at least as late as May 26, 2017 – four days before the deadline for the parties to file their proposed decisions and orders, including findings of fact and conclusions of law.	Unsupported/Unsubstantiated Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].
SuppA-2	1	Minute Order 50 embraces and perpetuates the ludicrous argument by the telescope proponents that HAR §13-1-38(a) does not mean what it plainly states, i.e. that the scheduling of findings and conclusions is determined by when the record is complete, not by how much time the parties have had to prepare such a filing. DOC- 646 at 12-13.	Mischaracterization Inaccurate/False Irrelevant/Inapplicable – This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].

SuppA-3	1-2	<p>The assertion by the Hearing Officer that the record does not have to be complete before the parties are compelled to file their findings of fact and conclusions of law prejudices the parties by forcing them to prepare their findings and conclusions without knowing what documents have been received into evidence</p>	<p>Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable -- This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>
SuppA-4	2	<p>The forced filing of findings and conclusions on an incomplete record violated the due process rights of the parties.</p>	<p>Unsupported/Unsubstantiated Inaccurate/False Irrelevant/Inapplicable -- This COL has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration See Temple's Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>
SuppB-1	2-3	<p>Since the May 30, 2017 close of the period for filing proposed decisions and orders, including findings of fact and conclusions of law, the Hearing Officer has filed 18 Minute Orders:</p> <ul style="list-style-type: none"> a. DOC-674 (Minute Order No. 57, Order denying Temple of Lono motion to schedule pending motions (Doc. 324)) b. DOC-681 (Minute Order No. 58, Order denying Temple of Lono motion to strike for failure to serve or extension of time and rescheduling of hearing (Doc. 364)) c. DOC-682 (Minute Order No. 59, Order denying Kamahana Kealoha motion of reconsideration on decision to motion of quo warranto (Doc. 379)) d. DOC-683 (Minute Order No. 60, Order denying Mehana Kihoi's motion for reconsideration to deny the intervention of Perpetuating 	<p>Not in Dispute</p>

Unique Educational Opportunities as a party in the contested case hearing (Doc. 380))

- e. DOC-684 (Minute Order No. 61, Order granting J. Leinaala Sleightholm's motion to accept pre-hearing statement, witness testimony, witness and exhibit list (Doc. 381))
- f. DOC-685 (Minute Order No. 62, Order denying Cindy Freitas' motion to dismiss contested case hearing re: Conservation District Use Application HA-3568 (Doc. 391) (Non-hearing motion))
- g. DOC-686 (Minute Order No. 63, Order denying Temple of Lono motion to restore cross-examination rights (Doc. 410))
- h. DOC-687 (Minute Order No. 64, Order denying motion to be a party to TMT case by Shelley Stephens (Mahi-Hanai) (Doc. 420))
- i. DOC-688 (Minute Order No. 65, Order denying the Temple of Lono motion to dismiss TIO as intervenor or alternatively, stay this proceeding (Doc. 427) and Harry Fergstrom's motion to remove TMT/TIO as a party, for lack of standing including any and all submissions into the evidentiary library (Doc 429))
- j. DOC-689 (Minute Order No. 66, Order denying the Temple of Lono request for witness subpoena for David Lassner, President of the University of Hawaii system (Doc. 438))
- k. DOC-690 (Minute Order No. 67, Order denying Temple of Lono request for witness subpoena for DLNR employee to testify on whether DLNR has a form to fill out requesting permission to build an altar on Mauana Kea (Doc. 439))
- l. DOC-692 (Minute Order No. 68, Order denying Flores-Case Ohana's

		<p>request for witness subpoena for 'John Doe' and for a subpoena duces tecum to disclose unidentified Maunakea (sic) Observatories Support Services employee involved with the destruction of ahu (shrine) on Mauna Kea in August of 2015 (Doc. 447))</p> <p>m. DOC-693 (Minute Order No. 69, Order granting J. Leinaala Sleightholm's motion to appear by phone (Doc. 449))</p> <p>n. DOC-696 (Minute Order No. 70, Order granting Brannon Kealoha motion of clarification reserving rights to participate (Doc. 450))</p> <p>o. DOC-697 (Minute Order No. 71, Order granting Joseph K. L. Camara's motion to allow witness testimony (Doc. 453))</p> <p>p. DOC-698 (Minute Order No. 72, Order granting Kahea: The Environmental Alliance's motion to permit live testimony of rebuttal witness Brian Cruz (Doc. 459))</p> <p>q. DOC-699 (Minute Order No. 73, Order granting in part applicant University of Hawaii at Hilo's motion for leave to present rebuttal testimony (Doc. 461)).</p>	
SuppB-2	3	<p>Six of the eighteen untimely rulings involved motions by the Temple of Lono. DOCs-674, 681, 686, 688, 689, 690.</p>	<p>Mischaracterization. The Hearing Officer's rulings are not untimely.</p> <p>Minute Order No. 39 at 3 [Doc. 406] ("No authority mandates a deadline for issuing orders on motions in contested cases)</p>
SuppB-3	3	<p>An examination of the procedural posture of the matters identified in herein, reveals that these matters constituted motions by parties for which the Hearing Officer had failed to issue timely minute orders. FoF herein 1.</p>	<p>Irrelevant/Inapplicable to the merits of the CDUA.</p> <p>Citation Does Not Support Proposition Mischaracterization. The Hearing</p>

<p>Officer's rulings are not untimely.</p> <p>Estoppel/Improper Reconsideration Minute Order No. 39 at 3 [Doc. 406] ("No authority mandates a deadline for issuing orders on motions in contested cases)</p> <p>Estoppel/Improper Reconsideration The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.,</i> Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>			
<p>Irrelevant/Inapplicable to the merits of the CDUA.</p> <p>Unsupported/Unsubstantiated.</p> <p>Mischaracterization. The Hearing Officer's rulings are not untimely.</p> <p>Vague/Ambiguous/Specious Reasoning Minute Order No. 39 at 3 [Doc. 406] ("No authority mandates a deadline for issuing orders on motions in contested cases)</p> <p>Irrelevant/Inapplicable to the merits of the CDUA.</p>	<p>There is no excuse in the record for the inordinate number of motions without timely responsive rulings.</p>	<p>3</p>	<p>SuppB-4</p>
	<p>Many of the minute orders ruled on matters that had long been moot. See DOC-686 (denying Temple of Lono motion to restore cross</p>	<p>4</p>	<p>SuppB-5</p>

<p>Citation Does Not Support Proposition Mischaracterization. The Hearing Officer had already issued oral rulings on the motions. The Minute Orders are consistent with those rulings.</p>	<p>examination rights after all witnesses had appeared); 689 (denying Temple of Lono motion to subpoena witness Lassiter after the close of the testimonial phase of the proceeding); 690 (denying Temple of Lono motion to subpoena DLNR employee after the close of the testimonial phase of this proceeding); 692 (denying Flores-Case 'Ohana request for subpoena for "John Doe" after the close of the testimonial phase of this proceeding); 693 (granting Leina'ala Sleightholm motion to appear by telephone at hearing that had already been concluded); 697 (granting Joseph K. I. Camara's motion to allow witness testimony after the close of the testimonial phase of this proceeding); 698 (granting KAHEA motion to call rebuttal witness after the close of the testimonial phase of this proceeding); 699 (granting Applicant's motion to call rebuttal witness after the close of the testimonial phase of this proceeding).</p>	<p>SuppB-6</p>
<p>Irrelevant/Inapplicable to the merits of the CDUA. Citation Does Not Support Proposition Mischaracterization.</p>	<p>The practice of issuing minute orders for matters already mooted by the passage of time began earlier than the post-hearing minute orders identified in FoF herein 1. See DOC-590 (ruling on request for pre-hearing status conference after hearing process completed).</p>	<p>4</p>
<p>Irrelevant/Inapplicable to the merits of the CDUA. Unsupported/Unsubstantiated Misrepresentation. The Hearing Officer had already issued oral rulings on the motions. Estoppel/Improper Reconsideration The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g., Temple's Mot. for Recon. Minute Order</i></p>	<p>The plethora of late filed orders confirms that the record was not complete before the Hearing Officer set the May 30, 2017 deadline for the filing of facts and conclusions of law.</p>	<p>SuppB-7</p>

SuppB-8	5	<p>Many of the late-filed orders could not be objectively considered by the Hearing Officer because to grant the motions would require invalidating substantial parts of the proceeding already conducted.</p>	<p>43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p> <p>Irrelevant/Inapplicable to the merits of the CDUA.</p> <p>Unsupported/Unsubstantiated Misrepresentation. The Hearing Officer had already issued oral rulings on the motions.</p> <p>Misunderstands process of ruling and separately issuing confirming orders</p> <p>Estoppel/Improper Reconsideration</p> <p>The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.,</i> Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p> <p>Inaccurate/False Misrepresentation</p> <p>Citation Does Not Support Proposition</p> <p>The Hearing Officer already considered Doc. Nos. 262, 263, 264, and 286 and</p>
SuppB-9	5	<p>Granting DOC-324 would have meant considering DOCs-262, 263, 264, and 286. DOC 324.</p>	

		<p>rejected the Temple's arguments in each one. See Minute Order No. 46 [Doc. 595]; Minute Order No. 47 [Doc. 609]; Minute Order No. 53 [Doc. 654]; Minute Order No. 54 [Doc. 656], respectively.</p> <p>Estoppel/Improper Reconsideration The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.</i>, Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>	
SuppB-10	5	<p>DOC-262 was filed on September 17, 2016.</p>	
SuppB-11	5	<p>Granting DOC-262 now would mean disqualifying the Hearing Officer as of the date the motion was filed.</p>	<p>Inaccurate/False Unsupported/Unsubstantiated Estoppel/Improper Reconsideration The Hearing Officer already denied Doc. 262. Minute Order No. 46 [Doc. 595].</p> <p>Estoppel/Improper Reconsideration The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a</p>

<p>due process argument. <i>See, e.g.</i>, Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>			
<p>Inaccurate/False Unsupported/Unsubstantiated Estoppel/Improper Reconsideration The Hearing Officer already denied Doc. 262. Minute Order No. 46 [Doc. 595].</p> <p>Estoppel/Improper Reconsideration The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.</i>, Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>	<p>Recusal of the Hearing Officer as of September 17, 2016 would mean that the entire hearing process conducted between October 20 and continuing to this day would be vacated.</p>		
<p>Incomplete. The Hearing Officer already denied Doc. 263. Minute Order No. 47 [Doc. 609].</p>		<p>DOC-263 was filed on September 17, 2016.</p>	<p>SuppB-13 5</p>
<p>Incomplete. Mischaracterization Doc. No. 263 was an untimely-filed motion seeking summary judgment on</p>		<p>DOC-263 was a dispositive motion seeking a summary judgment denying the application.</p>	<p>SuppB-14 5</p>

			issues that are irrelevant to the merits of the CDUA. Estoppel/Improper Reconsideration The Hearing Officer already denied Doc. 263. Minute Order No. 47 [Doc. 609].
SuppB-15	5	Granting DOC-263 now would mean that the entire contested case since that motion was filed would be vacated.	Inaccurate/False Unsupported/Unsubstantiated Estoppel/Improper Reconsideration The Hearing Officer already denied Doc. 263. Minute Order No. 47 [Doc. 609]. Estoppel/Improper Reconsideration The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.</i> , Temple’s Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple’s Motion to Schedule Pending Motions [Doc. 324]; Temple’s Substantive Joinder and Supplement to MKAH’s Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371]. Incomplete. The Hearing Officer already denied Doc. 264. Minute Order No. 53 [Doc. 654].
SuppB-16	5	DOC-264 was filed on September 17, 2016.	Incomplete. Mischaracterization. Lack of Jurisdiction Doc. No. 264 was an untimely-filed motion seeking summary judgment on issues that are beyond the jurisdiction of
SuppB-17	5	DOC-264 was a dispositive motion seeking summary judgment denying the application.	

SuppB-18	5	Granting DOC-264 now would mean that the entire contested case since that motion was filed would be vacated.	<p>the Hearing Officer and BLNR.</p> <p>Estoppel/Improper Reconsideration The Hearing Officer already denied Doc. 263. Minute Order No. 47 [Doc. 609].</p> <p>Inaccurate/False Unsupported/Unsubstantiated Lack of Jurisdiction Estoppel/Improper Reconsideration The Hearing Officer already denied Doc. 263. Minute Order No. 47 [Doc. 609].</p> <p>Estoppel/Improper Reconsideration The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.</i>, Temple’s Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple’s Motion to Schedule Pending Motions [Doc. 324]; Temple’s Substantive Joinder and Supplement to MKAH’s Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p> <p>Incomplete. The Hearing Officer already denied Doc. 286. Minute Order No. 54 [Doc. 656].</p> <p>Irrelevant/Inapplicable to the Merits of the CDUa</p>
SuppB-19	5	DOC-286 was filed on September 26, 2016.	
SuppB-20	5	DOC-286 sought reasoned explanations for the Hearing Officer’s decisions excluding numerous issues the Temple sought to litigate in this contested case.	

SuppB-21	5	Granting DOC-286 and providing reasoned explanations for the exclusions now would open up the opportunity for the Temple of Lono to file a motion requesting reconsideration of the decisions excluding issues.	<p>Irrelevant/Inapplicable to the Merits of the CDUA</p> <p>Inaccurate/False</p> <p>Unsupported/Unsubstantiated</p> <p>The Hearing Officer already denied Doc. 286. Minute Order No. 54 [Doc. 656].</p> <p>Estoppel/Improper Reconsideration</p> <p>The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.</i>, Temple’s Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple’s Motion to Schedule Pending Motions [Doc. 324]; Temple’s Substantive Joinder and Supplement to MKAH’s Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>
SuppB-22	5	Reconsideration of the decisions excluding issues could lead to expanding the issues to be heard.	<p>Irrelevant/Inapplicable to the Merits of the CDUA</p> <p>Inaccurate/False</p> <p>Unsupported/Unsubstantiated</p> <p>The Hearing Officer already denied Doc. 286. Minute Order No. 54 [Doc. 656].</p>
SuppB-23	6	Expanding the issues to be heard would require reopening the hearing to take additional evidence.	<p>Inaccurate/False</p> <p>Unsupported/Unsubstantiated</p> <p>Estoppel/Improper Reconsideration</p> <p>The issues to be heard in this contested case hearing have been long-settled. <i>See</i> Minute Order No. 19.</p>

SuppB-24	6	To take additional evidence would require giving the parties an opportunity to put on their case regarding each issue.	Inaccurate/False Unsupported/Unsubstantiated Estoppel/Improper Reconsideration The issues to be heard in this contested case hearing have been long-settled. <i>See</i> Minute Order No. 19.
SuppB-25	6	Addressing issues in this proceeding includes identification of witnesses and exhibits, submission of written direct testimony for each witness, cross-examining each witness by all parties other than the party offering the witness, additional proposed decisions and orders including findings of fact and conclusions of law, and responding to proposed decisions and orders.	Inaccurate/False Unsupported/Unsubstantiated Estoppel/Improper Reconsideration The issues to be heard in this contested case hearing have been long-settled. <i>See</i> Minute Order No. 19.
SuppB-1	6	The inordinate number of motions which had not been ruled upon prior to the deadline for the filing of proposed findings and conclusions is demonstrative of a lack of competence and/or failure to perform on behalf of the presiding officer.	Inaccurate/False Unsupported/Unsubstantiated That the parties—particularly the Temple—have filed an “inordinate number of motions” is not the fault of the Hearing Officer. <i>See also</i> Minute Order No. 39 at 3 [Doc. 406] (“No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.”). Estoppel/Improper Reconsideration The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.,</i>

<p>Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>		
<p>Inaccurate/False Unsupported/Unsubstantiated</p> <p>The record speaks for itself. The Temple offers no explanation as to how ruling on motions would "eliminate" anything from the record.</p> <p>Estoppel/Improper Reconsideration The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.</i>, Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>	<p>The numerous rulings addressed herein appear to be little more than an attempt to clean up the record to eliminate the evidence of non-performance.</p>	
<p>Inaccurate/False Unsupported/Unsubstantiated Mischaracterization</p> <p>Estoppel/Improper Reconsideration</p>	<p>The numerous rulings are confirmation that the record was not complete at the time the Hearing Officer set a deadline for the filing of findings of fact and conclusions of law.</p>	

			<p>The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.,</i> Temple’s Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple’s Motion to Schedule Pending Motions [Doc. 324]; Temple’s Substantive Joinder and Supplement to MKAH’s Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>
SuppB-4	6	<p>Setting a deadline for the filing of findings of fact and conclusions of law prior to the record being complete violated HAR §13-1-38(a).</p>	<p>Estoppel/Improper Reconsideration <i>See</i> Temple’s Mot. for Recon. Minute Order No. 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>
SuppB-5	6	<p>The Hearing Officer embraces and perpetuates the ludicrous argument by the telescope proponents that HAR §13-1-38(a) does not mean what it plainly states, i.e. that the scheduling of findings and conclusions is determined by when the record is complete, not by how much time the parties have had to prepare such a filing. <i>See e.g.</i> DOC-646 at 12-13.</p>	<p>Inaccurate/False Mischaracterization Estoppel/Improper Reconsideration <i>See</i> Temple’s Mot. for Recon. Minute Order No. 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>
SuppB-6	6	<p>The assertion by the Hearing Officer that the record does not have to be complete before the parties are compelled to file their findings of fact and conclusions of law prejudices the parties by forcing them to prepare their findings and conclusions without knowing what documents have been received into evidence and/or what the ruling will be on pending motions.</p>	<p>Inaccurate/False Mischaracterization Estoppel/Improper Reconsideration <i>See</i> Temple’s Mot. for Recon. Minute Order No. 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>
SuppB-7	6	<p>The forced filing of findings and conclusions on an incomplete record violated the due process rights of the parties.</p>	<p>Inaccurate/False Mischaracterization</p>

<p>Estoppel/Improper Reconsideration See Temple's Mot. for Recon. Minute Order No. 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>			
<p>Inaccurate/False Citation Does Not Support Proposition Estoppel/Improper Reconsideration The Hearing Officer already denied Doc. 262. Minute Order No. 46 [Doc. 595]</p>	<p>The Hearing Officer could not impartially decide DOC-262 because granting the motion would invalidate much of the contested case to date. See FOF herein 10-12.</p>		<p>6</p>
<p>The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. See, e.g., Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>		<p>Because the Hearing Officer could not decide DOC-262 impartially, the ruling denying the motion was a violation of the Temple's due process rights.</p>	<p>7</p>
<p>Inaccurate/False Unsupported/Unsubstantiated Estoppel/Improper Reconsideration The Hearing Officer already denied Doc. 262. Minute Order No. 46 [Doc. 595].</p>			<p>SuppB-9</p>
<p>The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a</p>			<p>SuppB-8</p>

<p>due process argument. <i>See, e.g.,</i> Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>			
<p>Inaccurate/False Citation Does Not Support Proposition Estoppel/Improper Reconsideration The Hearing Officer already denied Doc. 262. Minute Order No. 46 [Doc. 595].</p> <p>The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.,</i> Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>	<p>The Hearing Officer could not impartially decide DOC-263 because granting the motion would invalidate much of the contested case to date. See FOF herein 13-15.</p>		
<p>Inaccurate/False Unsupported/Unsubstantiated Estoppel/Improper Reconsideration The Hearing Officer already denied Doc. 262. Minute Order No. 46 [Doc. 595].</p> <p>The Temple admits that it repeatedly</p>	<p>Because the Hearing Officer could not decide DOC-263 impartially, the ruling denying the motion was a violation of the Temple's due process rights.</p>		

<p>sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.</i>, Temple’s Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple’s Motion to Schedule Pending Motions [Doc. 324]; Temple’s Substantive Joinder and Supplement to MKAH’s Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>			
<p>Inaccurate/False Citation Does Not Support Proposition Lack of Jurisdiction Estoppel/Improper Reconsideration The Hearing Officer already denied Doc. 263. Minute Order No. 47 [Doc. 609].</p>	<p>The Hearing Officer could not impartially decide DOC 264 because granting the motion would invalidate much of the contested case to date. See FOF herein 16-18.</p>	<p>7</p>	<p>SuppB-12</p>
<p>The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.</i>, Temple’s Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple’s Motion to Schedule Pending Motions [Doc. 324]; Temple’s Substantive Joinder and Supplement to MKAH’s Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>	<p>Because the Hearing Officer could not decide DOC-264 impartially, the ruling denying the motion was a violation of the Temple’s due process rights.</p>	<p>7</p>	<p>SuppB-13</p>

		<p>Estoppel/Improper Reconsideration The Hearing Officer already denied Doc. 263. Minute Order No. 47 [Doc. 609].</p> <p>The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.</i>, Temple’s Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple’s Motion to Schedule Pending Motions [Doc. 324]; Temple’s Substantive Joinder and Supplement to MKAH’s Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p> <p>Inaccurate/False Citation Does Not Support Proposition Estoppel/Improper Reconsideration The Hearing Officer already denied Doc. 286. Minute Order No. 54 [Doc. 656].</p> <p>The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.</i>, Temple’s Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple’s Motion to Schedule Pending Motions [Doc. 324]; Temple’s Substantive Joinder and Supplement to MKAH’s Renewed Mot. to Disqualify Hearing Officer [Doc. 343];</p>
SuppB-14	7	<p>The Hearing Officer could not impartially decide DOC-286 because granting the motion would require reopening the hearing to address any issues excluded that the Hearing Officer decided, upon reconsideration, should be included. See FoF herein 19-25.</p>

SuppB-15	7	To have to reopen the completed hearing process would be a major embarrassment for the Hearing Officer.	<p>Temple: Unresolved Matters [Doc. 371].</p> <p>Inaccurate/False Unsupported/Unsubstantiated Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA</p>
SuppB-16	7	Because the Hearing Officer could not decide DOC-286 impartially, the ruling denying the motion was a violation of the Temple's due process rights.	<p>Inaccurate/False Unsupported/Unsubstantiated Estoppel/Improper Reconsideration Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA The Hearing Officer already denied Doc. 286. Minute Order No. 54 [Doc. 656].</p> <p>The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.</i>, Temple's Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple's Motion to Schedule Pending Motions [Doc. 324]; Temple's Substantive Joinder and Supplement to MKAH's Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>
SuppB-17	7	The fact that one third of the untimely post-hearing minutes orders, see FoF herein 2, addressed motions filed by the Temple of Lono is evidence of bias against the Temple on the part of the Hearing Officer.	<p>Inaccurate/False Misrepresentation Unsupported/Unsubstantiated Citation does not support proposition. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA.</p>

<p>The fact that the Temple has filed nearly 40 motions in this proceeding—many of them untimely—is a problem of its own making and is not evidence of bias on the part of the Hearing Officer.</p> <p>Estoppel/Improper Reconsideration</p> <p>The Temple admits that it repeatedly sought—and has now obtained—rulings on the pending motions. It cannot now use those same rulings to manufacture a due process argument. <i>See, e.g.,</i> Temple’s Mot. for Recon. Minute Order 43 at 3-4 [Doc. 559]; Temple’s Motion to Schedule Pending Motions [Doc. 324]; Temple’s Substantive Joinder and Supplement to MKAH’s Renewed Mot. to Disqualify Hearing Officer [Doc. 343]; Temple: Unresolved Matters [Doc. 371].</p>		
<p>Inaccurate/False Misrepresentation Unsupported/Unsubstantiated Citation does not support proposition. Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration</p> <p>The Temple’s due process arguments have repeatedly been rejected. <i>See</i> Temple’s Mot. for Recon. Minute Order No. 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>	<p>Not providing meaningful opportunity to seek reconsideration of minute orders at issue herein because the orders addressed moot motions, see FoF herein 5, or could not be decided objectively and impartially, see FoF herein 8-25, violated the Temple’s due process rights.</p>	<p>SuppB-18</p> <p>7</p>

<p>The Hearing Officer had already issued oral rulings on the motions. The Minute Orders are consistent with those rulings.</p>		
<p>Inaccurate/False Misrepresentation Unsupported/Unsubstantiated Irrelevant/Inapplicable – This FOF has no bearing on the merits of the CDUA Estoppel/Improper Reconsideration</p>	<p>Requiring the Temple of Lono to evaluate whether to seek reconsideration of six minute orders, see FoF herein 2, and to prepare such motions within the same time frame, see DOC-552 setting deadlines, available to respond to the extensive findings and conclusions filed by the Applicant/TIO, DOC-671, violated the due process rights of the Temple of Lono.</p>	
<p>The Temple's due process arguments have repeatedly been rejected.</p>		

SuppB-19

7

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

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

Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

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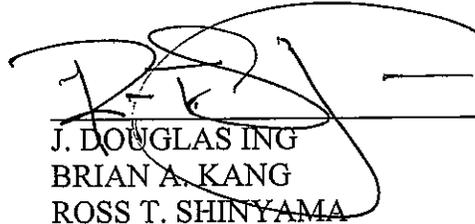
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