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BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF

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

CASE NO. BLNR-CC-16-002

TMT INTERNATIONAL OBSERVATORY,
LLC'S OPPOSITION TO CINDY FREITAS
MOTION TO ADMIT EXHIBITS OUT OF
TIME DATED JULY 10, 2017;
CERTIFICATE OF SERVICE

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

TMT INTERNATIONAL OBSERVATORY, LLC'S
OPPOSITION TO CINDY FREITAS MOTION TO ADMIT EXHIBITS OUT OF TIME
DATED JULY 10, 2017

TMT International Observatory, LLC (“TIO”), by and through its undersigned counsel, hereby submits this Opposition to Cindy Freitas Motion to Admit Exhibits Out of Time dated July 10, 2017 (“Motion”). The Motion should be denied for the reasons stated herein.¹

I. INTRODUCTION

The filing of this Motion by Petitioner Cindy Freitas (“Freitas”) comes more than 4 months after the closure of the 44-day contested case hearing, more than 4 months after the deadline for motions to move exhibits into evidence, and more than 6 weeks after the deadline for parties to submit proposed findings of fact and conclusions of law. This Motion is extremely untimely, and granting this Motion will be prejudicial and unfair to the parties who have already dedicated substantial time and resources in submitting their proposed findings of fact and conclusions of law based upon the record.

In addition to the Motion being untimely, the Motion seeks to admit evidence that is immaterial, irrelevant, and/or unduly repetitious. Freitas admits in the Motion that she had the opportunity to cross examine two different witnesses during the course of the contested case hearing regarding the same issue. There is simply no good reason to re-open the evidentiary portion of the hearing, which has been closed for more than 4 months, for an issue that was already addressed during the proceedings.

¹ Clarence Kukauakahi Ching’s Joinder to Cindy Freitas Motion to Admit Exhibits Out of Time, Memorandum in Support of Motion and Exhibits “A”, “B”, and “C” filed as Document 760 on July 10, 2017, dated July 11, 2017, should be denied for the same reasons stated herein.

II. ARGUMENT

A. The Motion is untimely.

As an initial matter, the Motion should be denied without reviewing its merit, inasmuch as it is extremely untimely. It is indisputable that the Motion was filed more than 4 months after the March 2, 2017 closure of the 44-day contested case hearing and more than 4 months after the March 9, 2017 deadline for motions to move exhibits into evidence. It is indisputable that this Motion was also filed more than 6 weeks after the May 30, 2017 deadline for parties to submit proposed findings of fact and conclusions of law, which were based upon the exhibits and testimony presented during the course of the 44-day contested case hearing.

Opening the record up at this point to admit additional evidence, after the parties have already submitted their proposed findings of fact and conclusions of law, would be extremely prejudicial and unfair. The parties have already dedicated substantial time and resources to analyzing the evidence presented during the course of the 44-day contested case hearing. The May 30, 2017 submissions of proposed findings of fact and conclusions of law were comprehensive, thorough, and lengthy. All parties were already provided the opportunity to respond to those proposed findings of fact and conclusions of law. Accordingly, the process set forth in HAR 13-1-38(a) for the exchange of proposed decisions and orders is already complete.

Moreover, Freitas has made no attempt to justify the untimely filing of the Motion. Freitas does not, and cannot, offer any good cause to consider this late Motion. It is of no consequence that the alleged June 24, 2017 incident that Freitas seeks to introduce into evidence supposedly occurred after the deadlines. If the record were re-opened for every potential incident occurring on Mauna Kea subsequent to the closing of the evidentiary portion and submission of proposed decisions and orders, then it is possible that a final decision and order

would never issue. At some point, which was over 4 months ago, the evidentiary record needs to be closed, and the case decided based upon the record. Accordingly, the Motion, which offers no good cause for its very untimely submission, must be denied.

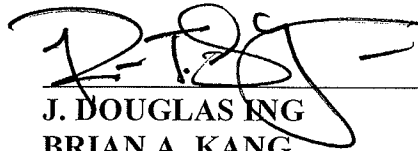
B. The evidence sought for admission is immaterial, irrelevant, and/or unduly repetitious.

In addition to the foregoing, Freitas cannot demonstrate any good cause to re-open the evidentiary portion of the proceedings because the evidence she seeks to admit is immaterial, irrelevant, and/or unduly repetitious. Both HRS §91-10 and HAR §13-1-35 provide for the exclusion of evidence that is immaterial, irrelevant, and/or unduly repetitious, and Freitas admits this in the Motion. Freitas also admits in the Motion that she had an opportunity to cross-examine E. Kalani Flores and Stephanie Nagata during the contested case hearing regarding the alleged “desecration of an ahu (Ahu o Kauakoko) located at the 3.0 and 3.5 mile marker.” Accordingly, the evidence that Freitas seeks to have admitted has already been presented during the course of the hearing. There is no reason to accept cumulative and repetitious evidence of this same kind, especially where the Motion comes more than 4 months after the deadline for exhibits. Furthermore, to the extent Freitas seeks to admit the evidence to support allegations of desecration under HRS §711-1107, the Hearing Officer has already ruled that the contested case hearing is the improper venue to adjudicate such claims. See Minute Order No. 53 [Doc. 654] at 4.

III. CONCLUSION

For all the reasons set forth herein, and any other reasons and authorities appearing of record, the Motion should be denied.

DATED: Honolulu, Hawaii, July 14, 2017.

A handwritten signature in black ink, appearing to read 'J. Douglas Ing', is written over a horizontal line.

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BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF

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

Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

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

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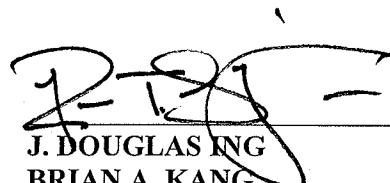
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