

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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`ohe Mauka, Hamakua, Hawai`i)
TMK (3) 4-4-015:009)
)
)
_____) **Certificate of Service**

AMENDED MINUTE ORDER NO. 96

**(Order Denying Flores-Case `Ohana’s Motion for
Reconsideration of Minute Order 85 (Doc. 752))**

This Amended Minute Order No. 96 reflects the inclusion of Doc. 753. All changes to the original Minute Order No. 96 are italicized.

The Flores-Case `Ohana filed their Motion for Reconsideration of Minute Order 85 (Doc. 752) on June 24, 2017 (“Motion”). In addition to the Motion, the following submissions were considered:

Doc. #	Filed	Party	Title
753	25-June-17	<i>C. Freitas</i>	<i>Cindy Freitas Joinder to Flores-Case Ohana’s Motion for Reconsideration of Minute Order No. 85 and Memorandum in Support of Motion</i>
755	29-Jun-17	Ching	Clarence Kukauakahi Ching's Joinder to Flores-Case `Ohana's Motion for Reconsideration of Minute Order No. 85 and Memorandum of Support of Motion (Document No. 752) (“Ching Joinder”)

756	30-Jun-17	UHH	The University of Hawaii at Hilo's Opposition to Flores-Case `Ohana's Motion for Reconsideration of Minute Order No. 85 [Doc. 752] (“UHH Opposition”)
757	30-Jun-17	TIO	TMT International Observatory, LLC's Joinder to the University of Hawaii at Hilo's Opposition to Flores-Case `Ohana's Motion for Reconsideration of Minute Order No. 85 [Doc. 752]

This Motion seeks reconsideration of Minute Order 85 (Doc. 752) because “the Hearing Officer has **still failed to provide full disclosure of the issues surrounding the act of spoliation of evidence** in the proceeding of this contested case hearing for the reasons set forth below as well as those outlined in its previous submittals Doc. Nos. 577, 623 and 676.” (emphasis in original document) Motion at page 1. In this Motion, the Flores-Case `Ohana takes point-by-point issue with the decision rendered in Minute Order 85.

UHH opposes the Motion because (a) the Hearing Officer properly denied the underlying motion as an attempt to seek further reconsideration; (b) the Motion fails to allege any new evidence or arguments that warrant reconsideration; and (c) the Flores-Case `Ohana did not seek leave to file its underlying motion. UHH Opposition, pages 2-6. UHH contends that, “The Motion offers no new evidence or argument that could not have been raised previously. Indeed, a substantial portion of the Motion is devoted to block-quotes taken from the Underlying Motion. *See* Motion at 3. The Motion then assumes that because the Hearing Officer found that the Flores-Case `Ohana ‘fail[ed] to provide evidentiary support for [its] allegations of spoliation,’ she must have ‘failed to examine the exhibits, declaration and memorandum in support’ of the Underlying Motion.” *Id.*

Clarence Kukauakahi Ching filed a substantive joinder to the Motion. (Doc. 755) The Ching Joinder re-argues the underlying motion or asserts legal argument that could have been raised previously.

TIO filed a simple joinder to the UHH Opposition. (Doc. 757) *Cindy Freitas filed a simple joinder in support of the Motion. (Doc. 753)*

“Any Motion for Reconsideration shall not be used to reargue the motion or set out positions of a purely repetitious nature or to present factual or legal grounds that could or should have been presented at the original hearing.” *AMFAC, Inc. v. Waikiki Beachcomber Inv. Co.*, 74 Haw. 85, 114 (1992). The law pertaining to motions for reconsideration is well-settled and clear.

As presented by UHH in its opposition:

A motion for reconsideration is not a vehicle for a dissatisfied litigant to re-litigate old matters or to raise arguments or evidence that could have been raised during the earlier adjudicated motion. *See Cho v. State*, 115 Hawai`i 373, 384, 168 P.3d 17, 28 (2007); *State v. Oughterson*, 99 Hawai`i 244, 255, 54 P.3d 415, 426 (2002).

UHH Opposition, at page 3.

The assertions in the Motion and Ching Joinder are re-arguments and expressed disagreements with the outcome of the underlying motion, insufficient to support granting a motion for reconsideration.

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

IT IS HEREBY ORDERED that the Motion is DENIED.

DATED: Honolulu, Hawai`i, July 17, 2017.



Judge Riki May Amano (Ret.)
Hearing Officer

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

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

BLNR Contested Case HA-16-02
Document title: **Minute Order 96, Amended**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced document was served upon the following parties by email (when indicated) on July 17, 2017 and by regular mail on July 17, 2017:

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