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KAHEA: The Hawaiian Environmental Alliance,
a domestic non-profit Corporation

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

In the Matter of:) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation) KAHEA: THE HAWAIIAN
District Use Permit (COUP) HA-3568 for the) ENVIRONMENTAL ALLIANCE'S
Thirty Meter Telescope at the Mauna Kea) SUPPLEMENTAL EXCEPTIONS TO THE
Science Reserve, Ka'ohē Mauka, Hamakua) HEARING OFFICER'S FINDINGS OF
District, Island of Hawai'i, TMK (3) 4-4-) FACT, CONCLUSIONS OF LAW, AND
015:009) DECISION AND ORDER DATED JULY 26,
) 2017; CERTIFICATE OF SERVICE
)

**KAHEA: THE HAWAIIAN ENVIRONMENTAL ALLIANCE'S SUPPLEMENTAL
EXCEPTIONS TO THE HEARING OFFICER'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION AND ORDER DATED JULY 26, 2017**

KAHEA: The Hawaiian Environmental Alliance, in addition to the exceptions set forth in
KAHEA: THE HAWAIIAN ENVIRONMENTAL ALLIANCE'S EXCEPTIONS TO THE
HEARING OFFICER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION AND ORDER DATED JULY 26, 2017, submits the following supplemental
exceptions to the Hearing Officer's Findings of Fact, Conclusions of Law, and Decision and
Order dated July 26, 2017 as follows:

Findings of Fact: the following are also clearly erroneous, wrong and against the reliable,
substantial and probative evidence: 48 (Petitioners' did object to timeliness of notice and

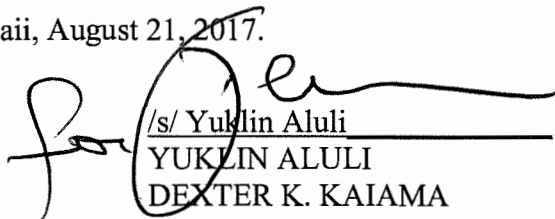
scheduling and she overruled and made counsel appear, in any event); 56 (TIO and P.U.E.O. did not have standing and the hearing officer reversibly erred); 62 (TIO and P.U.E.O. Inc. did not have standing as parties and the hearing officer reversibly erred); 74-75 (in addition, to objections raised by the Petitioners in their pleadings on the Motion to Set Issues, Hearings Officer committed reversible error (and possible bias) by simply incorporating issues suggested by UH and P.U.E.O., Inc. and excluding issues to be covered and offered by Petitioners); 80-82 (in addition, Hearing Officer again committed reversible error (and evidencing possible bias) by denying substantial requests by the Petitioners on the site visit); 83 (although such a notice was issued, the CDUP was voided and set aside by the Third Circuit in its Order for Remand, pursuant to the Supreme Court's Decision and Judgment in Mauna Kea Anaina Hou v. BLNR); 84-85 (there was nothing but an aspiration that was referenced about hearings in October. Petitioners' counsel also raised potential conflicts in scheduling during one of the hearings either in August or prior to the August hearings); 86 (Counsel requested that a status setting conference be set as no hearing dates, nor deadlines for exhibits and witness lists had yet been set by the Hearing Officer. Alternatively, he provided dates of availability in the request); 90 (Counsel for Petitioners raised numerous and strenuous objections to her failure to provide proper notice, in not setting dates sooner, and that it was unrealistic to now be setting dates to commence hearings in October on October 3, 2016. The hearing was moved back because, as of October 3, 2016, Amano had not even set pre-hearing dates for witness lists, witness statements, and exchange of exhibits, which she set for the first time on October 3, 2016 for the following week on October 11, 2016. She, also, as of October 3, 2016 had still not rule on substantive pre-hearing motions. Rather than blaming counsel and parties, the inaction(s) of HO Amano was the primary or a substantial factor in the failure to properly set pre-hearing dates and to timely rule on motions. the scheduling exhibited again her bias to expedite hearings for U.H. and TIO because of scheduling plans for TIO to decide on construction of the project); 96 (in addition, the Hearing Officer made substantial accommodations for UH and TIO witnesses to accommodate their scheduling, over parties' objections--which further exhibited Hearing Officer's bias in the proceedings).

Conclusions of Law: The following are wrong, clearly erroneous and against the reliable, probative, and the H.O. reversibly erred: 1 (H.O. was wrong and excluded relevant and

necessary issues proposed by Petitioners); 11 (did not follow the Supreme Court's decision in Mauna Kea Anaina Hou on remand); 14-15; 18-25 (issues were raised in Petitioners' pleadings and arguments at the hearing on the matter, which are incorporated herein); 43-45 (written and oral objections on the record of bias, raised during the proceedings, are incorporated herein); 46-65 (H.O. bias continued with inconsistent standards applied in which H.O. allowed flexibility to scheduling and presentation of evidence, while requiring strict compliance with evidentiary standards, in many cases, and frequently precluding and limiting cross-examination for Petitioners, all in violation of due process); 81 (improper shifting of burden without any authority); 85.

In addition, the Hearing Officer also committed reversible error (and the arguments, authorities, and evidence set forth in the pleadings and raised by the Petitioners and also at hearings when allowed are incorporated herein) when either the Board or Hearing Officer ruled on the following pre-hearing motions set forth in Appendices "A" and "B"--Minute Order No. 4 [Doc. 14, filed 5/6/16]; Minute Order 9 [Doc. 63, filed 6/3/16]; Doc. 42, filed 5/25/16; Minute Order No. 37 [Doc. 388, filed 10/19/16]; Minute Order No. 38 [Doc. 389, filed 10/19/16]; Minute Order No. 19 [Doc. 281, filed 9/23/16]; Minute Order No. 17 [Doc. 245, filed 8/26/16]; Minute Order No. 100 [Doc. 774, filed 7/17/17]; Minute Order 100 Doc. 774, filed 7/17/17]; Minute Order No. 45 [Doc. 590, filed 5/2/17]; Non-Motion Minute Order 1001 [Doc. 774, filed 7/17/17]; Minute Order No. 39 [Doc. 406, filed 10/28/16]; Response on TR of 10/17/16 at 111:11 to UH Hilo's Statement of Position re Scheduling; and any other denial of pre-hearing motions and objections filed and/or raised by Petitioners.

DATED: Honolulu, Hawaii, August 21, 2017.



/s/ Yuklin Aluli
YUKLIN ALULI

DEXTER K. KAIAMA

Co-Counsel for Petitioner

KAHEA: The Hawaiian Environmental Alliance,
a domestic non-profit Corporation

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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

BLNR Contested Case HA-16-02

CERTIFICATE OF SERVICE

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

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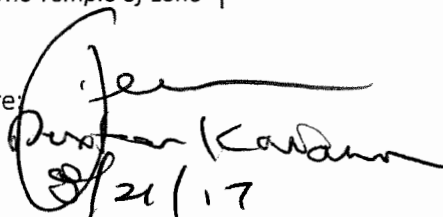
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Name:

Date:


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