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HAWAIIAN-ENVIRONMENTAL ALLIANCE

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) MAUNA KEA HUI'S MEMORANDUM IN
District Use Permit (CDUP) HA-3568 for the) OPPOSITION TO TMT INTERNATIONAL
Thirty Meter Telescope at the Mauna Kea) OBSERVATORY LLC'S REQUEST TO
Science Reserve, Kaohe Mauka, Hamakua) SUPPLEMENT THE RECORD; CERTIFICATE OF
District, Island of Hawai'i, TMK (3) 4-4-) SERVICE
015:009)
_____)

MAUNA KEA HUI'S MEMORANDUM IN OPPOSITION TO TMT INTERNATIONAL
OBSERVATORY LLC'S REQUEST TO SUPPLEMENT THE RECORD

MAUNA KEA ANAINA HOU, an unincorporated association, KEALOHA PISCIOTTA;
CLARENCE KUKAUAKAHI CHING; DEBORAH J. WARD; PAUL K. NEVES; and KAHEA: THE
HAWAIIAN ENVIRONMENTAL ALLIANCE, a domestic non-profit corporation ("Petitioners")
respectfully submit this memorandum in opposition to TMT INTERNATIONAL OBSERVATORY LLC's
(TIO) request to supplement the record with its Exhibit "A", filed December 10, 2021 ("TIO request").
TIO's Exhibit "A" consists in a letter from the state Department of Health (DOH) extending a permit for

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Dec 13 2021 14:44

TMT to discharge stormwater runoff, dated May 28, 2019. *Id.* This memorandum in opposition is submitted pursuant to HAR §13-1-34.¹

TIO cites no authority for its request to supplement the record. Instead, TIO alleges Parties E. KALANI FLORES and the FLORES-CASE ‘OHANA (“Flores”) filed a memorandum that exceeded that permitted under Minute Order No. 2, and thus seeks to introduce more evidence in response to Flores. TIO’s submission of Exhibit “A” is likewise outside of the scope of issues permitted to be addressed under Minute Order No. 2.

TIO represents that the issue of TMT stormwater runoff permitting is outside of those raised by Petitioners initial motion and thus the scope of responsive briefing under Minute Order No. 2, filed November 19, 2021. TIO request at 2. TIO, however, did not move to strike the Flores’ memorandum, nor provide substantive evidence or argument in support for its position that issues raised by Flores exceed the scope of those allowed to be addressed under Minute Order No. 2.

In conclusion, TIO’s request to supplement should be denied because: (1) Flores’ memorandum properly addressed the issue of whether Applicant UNIVERSITY OF HAWAI‘I AT HILO (UH Hilo) has initiated construction in compliance with conditions of its conservation district use permit and therefore no remedy, included the one self-fashioned by TIO, is required in response to Flores’ filing; and, (2) to the extent the Board agrees that Flores’ memorandum exceeded the scope of that allowed under Minute Order No. 2, TIO’s own Exhibit “A” is thus also outside that scope and should also be also disallowed as exceeding the Minute Order.

DATED: Honolulu, Hawai‘i

December 13, 2021

/s/ Richard Naiwieha Wurdeman
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ATTORNEY AT LAW, A LAW CORPORATION

/s/ Bianca Isaki
LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI
Attorneys for the Mauna Kea Hui

¹ TIO’s request is a motion and Board rules anticipate memoranda in opposition to motions. *See In re Contested Case Hearing On Water Use Permit Application Originally Filed By Kukui (Molokai), Inc.*, 143 Hawai‘i 434, 443, 431 P.3d 807, 816 (2018) quoting Black’s Law Dictionary 1497 (10th ed. 2014) (“A ‘request’ is ‘[a] motion by which a member invokes a right, seeks permission for the exercise of a privilege, or asks a question.’”).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing documents was duly served upon the following parties, by email, on this date:

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DATED: Honolulu, Hawai'i

December 13, 2021



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