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PETITIONERS MAUNA KEA ANAINA HOU, KEALOHA  
PISCIOTTA; CLARENCE KUKAUAKAHI CHING;  
DEBORAH J. WARD; PAUL K. NEVES; and KAHEA:  
THE HAWAIIAN-ENVIRONMENTAL ALLIANCE

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF ) Docket No. BLNR-CC-HA-22-02  
)  
The Petition of Mauna Kea Hui for ) PETITIONERS MAUNA KEA HUI'S  
A Declaratory Order filed May 24, 2021 ) MOTION TO MODIFY MINUTE  
) ORDER NO. 6; DECLARATION  
) OF RICHARD NAIWIEHA  
) WURDEMAN; EXHIBITS "1" – "3";  
) and CERTIFICATE OF SERVICE  
)  
)

PETITIONERS MAUNA KEA HUI'S MOTION TO MODIFY MINUTE ORDER NO. 6

COMES NOW PETITIONERS MAUNA KEA ANAINA HOU, KEALOHA  
PISCIOTTA, CLARENCE KUKAUAKAHI CHING, DEBORAH J. WARD, PAUL K. NEVES,  
and KAHEA: THE HAWAIIAN-ENVIRONMENTAL ALLIANCE (also collectively referred to  
as "Mauna Kea Hui" or "Petitioners") and hereby respectfully request that this Honorable Board  
**advance** the hearing on the Mauna Kea Hui's Motion to Reopen Hearing to Hear Motion to  
Confirm Non-Compliance with Condition No. 4, or, Alternatively, **for Declaratory Orders**

Received  
Office of Conservation and Coastal Lands  
Department of Land and Natural Resources  
State of Hawaii  
August 17, 2023

concerning the Same, dated May 24, 2021, from October 6, 2023 to the earliest regularly scheduled Board meeting date in September of 2023 (the Petitioners are available on September 8, 2023, and September 22, 2023 and the Petitioners would have also been available for an August 25, 2023 hearing, except that the 15 day notice requirement under HRS Chapter 91 takes away from that possibility) or, alternatively, reschedule to any of the regularly scheduled BLNR Board hearing dates in October of 2023, i.e. October 13, 2023 or October 27, 2023. If none of those dates work for the Board, the Petitioners can also be available for an in-person hearing on the earliest available regular Board hearing dates in November or December of 2023 for a hearing on the Petitioners Mauna Kea Hui's Motion to Reopen Hearing to Hear Motion to Confirm Non-Compliance with Condition No. 4, or, Alternatively, Petition for Declaratory Orders Concerning the Same. Counsel is not currently available for a Zoom video conference hearing on October 6, 2023, which is also a non-Board meeting date, as Counsel has a scheduling conflict.

The Petitioners also respectfully request that it be allowed twenty (20) minutes for argument before the Board with the right to reserve any of that time for rebuttal argument, and the Petitioners have no objection to allowing the applicant, University of Hawaii at Hilo, the same amount of argument time, as the Petitioners are the movants and UH Hilo is the applicant. The Petitioners propose that no additional time would be required for any of the other parties.

Further, the Petitioners would respectfully request that Minute Order No. 6 (please see Exhibit "3" attached hereto, which is a true and correct copy of the said minute order) or a subsequent minute order reflect that the July 28, 2023 hearing that was scheduled through Minute Order No. 3, dated July 3, 2023 (please see Exhibit "1" attached hereto, which is a true and correct copy of the said Order) was rescheduled because of a request by counsel for TMT International Observatory, LLC ("TIO") to reschedule the hearing because of a conflict in TIO's counsel's schedule and the Minute Order No. 5 simply stated that the hearing on the matter was being deferred (please see Exhibit "2" attached hereto, which is a true and correct copy of the said Minute Order No. 5). The Petitioners, who have been awaiting a hearing since May 24, 2021, when they first filed the instant motion before the Board were certainly prepared to proceed on July 28, 2023, a regularly scheduled Board hearing date, approximately 26 months after they filed their Motion. With no record of the reason for the continuance of the hearing and why the hearing has been currently reset for a remote hearing, instead, in October, the Petitioners would respectfully request that a record be established. Given the public importance of this matter, the Petitioners would also

respectfully request that hearing be an in-person hearing on a regularly scheduled Board date as it had been originally set on July 28, 2023 before the Board deferred the matter from that date and with an in-person hearing having been set at that time.

This Motion is brought pursuant to Hawaii Administrative Rules 13-1-11 through and including 31-1-14, 13-1-27 and 13-1-34, HRS Chapter 91, and Minute Orders No. 3, 5 and 6 in the instant matter. It is also based on the records and files in the instant case, the Declaration of Counsel attached hereto, Exhibits 1-3 attached hereto, and any further arguments that may be made or evidence that may be adduced on any hearing that may be held on the instant motion.

DATED: Honolulu, Hawaii, August 17, 2023.

/s/ Richard Naiwieha Wurdeman

Richard Naiwieha Wurdeman

Bianca K. Isaki

Attorneys for the Mauna Kea Hui

PETITIONERS MAUNA KEA ANAINA HOU,

KEALOHA PISCIOTTA; CLARENCE

KUKAUAKAHI CHING; DEBORAH J. WARD;

PAUL K. NEVES; and KAHEA: THE

HAWAIIAN-ENVIRONMENTAL ALLIANCE

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF	)	Docket No. BLNR-CC-HA-22-02
	)	
The Petition of Mauna Kea Hui for	)	DECLARATION OF COUNSEL
A Declaratory Order filed May 24, 2021	)	
	)	
	)	
	)	
	)	
	)	
	)	

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DECLARATION OF COUNSEL

I, RICHARD NAIWIEHA WURDEMAN, do declare as follows:

1. I am a licensed attorney and I have been counsel for the Petitioners Mauna Kea Hui since in or about April of 2013 and I am co-counsel for the Petitioners in the instant matter before the Board of Land and Natural Resources.

2. On behalf of the Petitioners MAUNA KEA ANAINA HOU, KEALOHA PISCIOTTA, CLARENCE KUKAUAKAHI CHING, DEBORAH J. WARD, PAUL K. NEVES, and KAHEA: THE HAWAIIAN-ENVIRONMENTAL ALLIANCE, counsel respectfully requests that this Honorable Board **advance** the hearing on the Mauna Kea Hui’s Motion to Reopen Hearing to Hear Motion to Confirm Non-Compliance with Condition No. 4, or, Alternatively, for Declaratory Orders concerning the Same, dated May 24, 2021, from October 6, 2023 to the earliest regularly scheduled Board meeting date in September of 2023 (the Petitioners are available on September 8, 2023, and September 22, 2023 and the Petitioners would have also been available for an August 25, 2023 hearing, except that the 15 day notice requirement under HRS Chapter 91 takes away from that possibility) or, alternatively, reschedule to any of the regularly scheduled BLNR Board hearing dates in October of 2023, i.e. October 13, 2023 or October 27, 2023. If none of those dates work for the Board, the Petitioners can also be available for an in-person hearing on the earliest available regular Board hearing dates in November or December of 2023 for a hearing on the Petitioners Mauna Kea Hui’s Motion to Reopen Hearing to Hear Motion to Confirm Non-Compliance with Condition No. 4, or, Alternatively, Petition for

Declaratory Orders Concerning the Same. Counsel is not currently available for a Zoom video conference hearing on October 6, 2023, which is also a non-Board meeting date, as Counsel has a scheduling conflict.

3. Counsel has an arbitration set during the week of October 2, 2023 that ends on October 6, 2023 and counsel has been unable to reschedule that arbitration to date. It had already been set at the time the Board issued its order deferring the hearing to that particular date. Counsel also starts a jury trial set for 8 trial days commencing on October 16, 2023 and counsel is hoping that it would be done by Friday, October 27, 2023 should that be the earliest and only other regularly scheduled Board meeting day, which is obviously not the most ideal resetting for counsel).

4. The Petitioners are also respectfully requesting that it be allowed twenty (20) minutes for argument before the Board with the right to reserve any of that time for rebuttal argument, and the Petitioners have no objection to allowing the applicant, University of Hawaii at Hilo, the same amount of argument time, as the Petitioners are the movants and UH Hilo is the applicant. The Petitioners propose that no additional time would be required for any of the other parties.

5. Attached hereto as Exhibit "1" is a true and correct copy of Minute Order No. 3, dated July 3, 2023.

6. Attached hereto as Exhibit "2" is a true and correct copy of Minute Order No. 5, dated July 19, 2023.

7. Attached hereto as Exhibit "3" is a true and correct copy of Minute Order No. 6, dated August 4, 2023.

8. Further, the Petitioners would respectfully request that an Order be issued by the Board indicating that the July 28, 2023 hearing on the Petitioner's Motion was continued because of a request made by counsel for TMT International Observatory, LLC so that a record is made as the Board simply indicated that the Board deferred the hearing set for July 28, 2023 without any specifics being set forth in the record. The Petitioners, who have been awaiting a hearing since May 24, 2021, when they first filed the instant motion before the Board were certainly prepared to proceed on July 28, 2023, a regularly scheduled Board hearing date, approximately 26 months after they filed their Motion. With no record of the reason for the continuance of the hearing and why the hearing has been currently reset for a remote hearing, instead, in October, the Petitioners

would respectfully request that a record be established. Given the public importance of this matter, the Petitioners would also respectfully submit and request that the hearing on their Motion be an in-person hearing on a regularly scheduled Board date as it had been originally set on July 28, 2023 before the Board deferred the matter from that date and with an in-person hearing having been set at that time.

9. I, RICHARD NAINWIEHA WURDEMAN, do hereby declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawaii, August 17, 2023.

/s/ Richard Naiwieha Wurdeman

Richard Naiwieha Wurdeman

Bianca K. Isaki

Attorneys for the Mauna Kea Hui

PETITIONERS MAUNA KEA ANAINA HOU,

KEALOHA PISCIOTTA; CLARENCE

KUKAUAKAHI CHING; DEBORAH J. WARD;

PAUL K. NEVES; and KAHEA: THE

HAWAIIAN-ENVIRONMENTAL ALLIANCE

EXHIBIT "1"

BOARD OF LAND AND NATURAL RESOURCES  
STATE OF HAWAI'I

IN THE MATTER OF ) Docket No. BLNR-CC-HA-22-02  
)  
The Petition of Mauna Kea Hui for ) MINUTE ORDER NO. 3;  
a Declaratory Order Filed May )  
24,2021 ) Exhibits A-I  
)  
) CERTIFICATE OF SERVICE  
)  
)  
)

**MINUTE ORDER NO. 3**

On May 24, 2021, Petitioners MAUNA KEA ANAINA HOU, KEALOHA PISCIOTTA, CLARENCE KUKAUAKAHI CHING, DEBORAH J. WARD, PAUL NEVES, and KAHEA: THE HAWAIIAN-ENVIRONMENTAL ALLIANCE (collectively, "Petitioners" or the "Mauna Kea Hui") filed a "Motion to Reopen Hearing to Hear Motion to Confirm Non-Compliance With Condition No. 4, or Alternatively, Petition for Declaratory Orders Concerning the Same" (the "Motion") under the caption of Contested Case No. BLNR-CC-16-002. The Motion is attached hereto as **Exhibit A**.

Contested Case No. BLNR-CC-16-002 was fully decided upon the issuance of Findings of Fact, Conclusions of Law and Decision and Order (hereinafter, the "D&O") on September 27, 2017. The D&O was upheld by the Hawai'i Supreme Court in *Matter of Conservation Dist. Use Application HA-3568*, 143 Hawai'i 379,431 P.3d 752 (2018).

The Board of Land and Natural Resources ("Board") considers Petitioner's Motion as a petition for a declaratory ruling pursuant to Hawai'i Revised Statutes ("HRS")§ 91-8 and HAR§ 13-1-27 rather than a motion for reconsideration of the D&O. On October 20, 2021 the Board issued Minute Order 1 which granted the Petitioners' motion to the extent it seeks to open a new proceeding for a declaratory ruling for the limited purpose of determining whether UHH has complied with Condition No. 4 of the CDUP. Minute Order 1 is attached hereto as **Exhibit B**.

The parties named in the petitioners' Certificate of Service were invited to file briefings in response to the motion and replies in support of the motion. On October 31, 2021 The Temple of Lono filed a brief in response to the motion (**Exhibit C**). On November 3, 2021 Cindy Freitas filed a brief in response to the motion (**Exhibit D**). On November 4, 2021 TMT International Observatory LLC filed a memorandum in opposition to the Mauna Kea Hui motion (**Exhibit E**). On November 4, 2021 the University of Hawai'i at Hilo filed a joinder to TMT International Observatory's memorandum (**Exhibit F**). On November 4, 2021 Perpetuating Unique Educational Opportunities ("PUEO") filed a joinder to TMT International Observatory's memorandum (**Exhibit G**). On December 3, 2021 the Flores-Case 'Ohana filed a memorandum in support of Mauna Kea Hui's motion (**Exhibit H**).



The index of the responses and replies is attached hereto as **Exhibit I**, and all filings are available online at [dlnr.hawaii.gov/occl/tmt](http://dlnr.hawaii.gov/occl/tmt), Table 3, "2021 Petition."

The Board will consider the arguments raised in the motion, responses, and replies at a regularly scheduled Board Meeting on July 28 commencing at 9:30 am at 1151 Punchbowl St., Room 132 (Kalanimoku Building), Honolulu, Hawai'i.

Each party who has filed a motion or a response to the motion shall have fifteen minutes to present oral arguments before the Board. Time may not be assigned from one party to another. The Board may elect to ask questions of any party once they have completed their argument; this time will not count towards the fifteen-minute total.

The Petitioners Mauna Kea Hui, represented by Richard Naiwieha Wurdeman and the Law Office of Bianca Isaki, shall present first. The Temple of Lono, Cindy Freitas, and the Flores-Case 'Ohana, joining as a pro se parties, shall present afterwards. The Respondents TMT International Observatory, the University of Hawai'i at Hilo, and PUEO shall present afterwards. Parties wishing to testify remotely shall submit their request to the Custodian of the Records at [michael.cain@hawaii.gov](mailto:michael.cain@hawaii.gov).

Petitioners may elect to reserve time from their allotted fifteen minutes for rebuttal argument. Rebuttal arguments will take place once all parties have completed their initial arguments.

No additional filings will be taken in this case.



\_\_\_\_\_  
DAWN N.S. CHANG, Chairperson  
Board of Land and Natural Resources

\_\_\_\_\_  
AIMEE KELI'I BARNES, Board Member

*vernon char*

\_\_\_\_\_  
VERNON CHAR, Board Member



\_\_\_\_\_  
KAREN ONO, Board Member

\_\_\_\_\_  
DOREEN NĀPUA CANTO, Board Member

*Riley Smith*

\_\_\_\_\_  
RILEY SMITH, Board Member



\_\_\_\_\_  
WESLEY KAIWI NUI YOON, Board  
Member

DATED: Honolulu, Hawai'i: Jul 3, 2023

EXHIBIT "2"

BOARD OF LAND AND NATURAL RESOURCES  
STATE OF HAWAI'I

IN THE MATTER OF )  
 ) Docket No. BLNR-CC-HA-22-02  
 )  
The Petition of Mauna Kea Hui for )  
a Declaratory Order Filed May ) MINUTE ORDER NO. 5;  
24,2021 )  
 ) CERTIFICATE OF SERVICE  
 )  
 )

**MINUTE ORDER NO. 5**

On May 24, 2021, Petitioners MAUNA KEA ANAINA HOU, KEALOHA PISCIOTTA, CLARENCE KUKAUAKAHI CHING, DEBORAH J. WARD, PAUL NEVES, and KAHEA: THE HAWAIIAN-ENVIRONMENTAL ALLIANCE (collectively, "Petitioners" or the "Mauna Kea Hui") filed a "Motion to Reopen Hearing to Hear Motion to Confirm Non-Compliance With Condition No. 4, or Alternatively, Petition for Declaratory Orders Concerning the Same" (the "Motion") under the caption of Contested Case No. BLNR-CC-16-002.

Oral arguments on the motion, responses, and replies were set for a regularly scheduled Board Meeting on July 28, 2023. This hearing will be deferred, and scheduled at a later date.

DATED: Honolulu, Hawai'i: Jul 19, 2023



\_\_\_\_\_  
DAWN N.S. CHANG, Chairperson  
Board of Land and Natural Resources

*Aimee Elise Keli'i Barnes*

\_\_\_\_\_  
AIMEE KELI'I BARNES, Board Member

\_\_\_\_\_  
DOREEN NĀPUA CANTO, Board Member


*Riley Smith*

\_\_\_\_\_  
VERNON CHAR, Board Member

\_\_\_\_\_  
RILEY SMITH, Board Member

*K.O.*

\_\_\_\_\_  
KAREN ONO, Board Member

  
\_\_\_\_\_  
WESLEY KAIWI NUI YOON, Board  
Member

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the following documents: Minute Order 5

Was duly served upon the following parties, by email, on Jul 19, 2023

Julie China  
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DATED: Honolulu, Hawaii,  
Jul 19, 2023

*S Michael Cain*

\_\_\_\_\_  
Michael Cain  
Custodian of Records  
Board of Land and Natural Resources

EXHIBIT "3"

BOARD OF LAND AND NATURAL RESOURCES  
STATE OF HAWAI'I

IN THE MATTER OF )  
 ) Docket No. BLNR-CC-HA-22-02  
 )  
The Petition of Mauna Kea Hui for )  
a Declaratory Order Filed May ) MINUTE ORDER NO.6;  
24,2021 ) Exhibits A-I  
 )  
 ) CERTIFICATE OF SERVICE  
 )  
 )  
 )

**MINUTE ORDER NO. 6**

On May 24, 2021, Petitioners MAUNA KEA ANAINA HOU, KEALOHA PISCIOTTA, CLARENCE KUKAUAKAHI CHING, DEBORAH J. WARD, PAUL NEVES, and KAHEA: THE HAWAIIAN-ENVIRONMENTAL ALLIANCE (collectively, "Petitioners" or the "Mauna Kea Hui") filed a "Motion to Reopen Hearing to Hear Motion to Confirm Non-Compliance With Condition No. 4, or Alternatively, Petition for Declaratory Orders Concerning the Same" (the "Motion") under the caption of Contested Case No. BLNR-CC-16-002. The Motion is attached hereto as **Exhibit A**.

Contested Case No. BLNR-CC-16-002 was fully decided upon the issuance of Findings of Fact, Conclusions of Law and Decision and Order (hereinafter, the "D&O") on September 27, 2017. The D&O was upheld by the Hawai'i Supreme Court in *Matter of Conservation Dist. Use Application HA-3568*, 143 Hawai'i 379,431 P.3d 752 (2018).

The Board of Land and Natural Resources ("Board") considers Petitioner's Motion as a petition for a declaratory ruling pursuant to Hawai'i Revised Statutes ("HRS")§ 91-8 and HAR§ 13-1-27 rather than a motion for reconsideration of the D&O. On October 20, 2021, the Board issued Minute Order 1 which granted the Petitioners' motion to the extent it seeks to open a new proceeding for a declaratory ruling for the limited purpose of determining whether UHH has complied with Condition No. 4 of the CDUP. Minute Order 1 is attached hereto as **Exhibit B**.

The parties named in the petitioners' Certificate of Service were invited to file briefings in response to the motion and replies in support of the motion.

On October 31, 2021, The Temple of Lono filed a brief in response to the motion (**Exhibit C**). On November 3, 2021, Cindy Freitas filed a brief in response to the motion (**Exhibit D**). On December 3, 2021, the Flores-Case 'Ohana filed a memorandum in support of Mauna Kea Hui's motion (**Exhibit E**). The Temple of Lono, Cindy Freitas, and the Flores-Case 'Ohana are also collectively included in the reference to "Petitioners."

On November 4, 2021, TMT International Observatory LLC filed a memorandum in opposition to the Mauna Kea Hui motion (**Exhibit F**). On November 4, 2021, the University of Hawai'i at Hilo (UHH) filed a joinder to TMT International Observatory's memorandum (**Exhibit**

G). On November 4, 2021 Perpetuating Unique Educational Opportunities (“PUEO”) filed a joinder to TMT International Observatory’s memorandum (**Exhibit H**). TMT, UHH, and PUEO are collectively referred to as “Respondents.”

The Board will hold oral arguments regarding the issues raised in the motion, responses, and replies on Friday, October 6, 2023, commencing at 1:00 p.m. The hearing will be held remotely via Zoom. A link will be provided to Petitioners and Respondents are collectively referred to as “Parties.” The hearing will be livestreamed at [www.youtube.com/c/boardoflandandnaturalresourcesdlnr](http://www.youtube.com/c/boardoflandandnaturalresourcesdlnr).

**Oral arguments will be limited to the Parties that have filed written briefs in this declaratory proceeding.** Each Petitioner shall have fifteen minutes to present their arguments, followed by each Respondent who shall also have fifteen minutes each. Petitioners Mauna Kea Hui, represented by Richard Naiwieha Wurdeman and the Law Office of Bianca Isaki, shall present first, followed by the remaining Petitioners. Respondent TMT International Observatory shall present first for the Respondents, followed by the remaining Respondents. Time cannot be transferred from one Party to another.

Petitioners may elect to reserve time from their fifteen minutes for rebuttal arguments. Rebuttal arguments will take place once all parties have completed their initial arguments.

The Board may elect to ask questions of any party once they have completed arguments; this time will not count towards the total.

Five business days prior to the hearing, Petitioner Mauna Kea Hui shall submit the order in which Petitioners will be presenting oral arguments to the Custodian of the Records at [michael.cain@hawaii.gov](mailto:michael.cain@hawaii.gov). Respondent TMT International Observatory, LLC shall do the same for Respondents.

Requests to change this Minute Order shall be by motion filed within ten business days following the date of this Minute Order.

Parties shall submit proposed orders to the Custodian of the Records ten business days after the transcript is prepared.

The index of the responses and replies is attached hereto as **Exhibit I**, and all filings are available online at [dlnr.hawaii.gov/occl/tmt](http://dlnr.hawaii.gov/occl/tmt), Table 3, “2021 Petition.”

No additional filings will be accepted in this case.



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DAWN N.S. CHANG, Chairperson  
Board of Land and Natural Resources

*Aimee Elise Keli'i Barnes*

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AIMEE KELI'I BARNES, Board Member

*Doreen*

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DOREEN NĀPUA CANTO, Board Member

*Riley Smith*

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VERNON CHAR, Board Member

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RILEY SMITH, Board Member



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KAREN ONO, Board Member

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WESLEY KAIWI NUI YOON, Board  
Member

DATED: Honolulu, Hawai'i: Aug 4, 2023



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below, a true and correct copy of the foregoing was served on the following parties via e-mail:

Julie China, Esq.  
julie.h.china@hawaii.gov  
Deputy Attorney General  
Attorneys for the Board of Land And  
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DATED: Honolulu, Hawaii, August 17, 2023

/s/ Richard Naiwieha Wurdeman  
Richard Naiwieha Wurdeman  
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