

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) MINUTE ORDER NO.6;
a Declaratory Order Filed May)
24,2021) Exhibits 1-3
)
) CERTIFICATE OF SERVICE
)
)
)

MINUTE ORDER NO. 7

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.

In Minute Order 1, dated October 20, 2021, the Board wrote that it would "consider the arguments raised in the Motion, response, and reply without a hearing." The Board reconsidered, and in Minute Order 3, dated July 3, 2023, wrote that it would entertain oral arguments on July 28, 2023. That date was rescheduled upon a request from counsel for TMT International Observatory LLC, who would not have been available on July 28. The Board issued Minute Order 6 on August 4, 2023, which set the date for oral arguments for October 6, 2023.

On August 17, 2023 counsel for Petitioners Mauna Kea Hui filed a Motion to modify Minute Order 6. The Petitioners' Motion requested that, in part, oral arguments be held on a regularly scheduled Board meeting date, that they be rescheduled as counsel would not be available on October 6, and that the time allotted for arguments be increased from fifteen to twenty minutes for Petitioners Mauna Kea Hui and Respondent University of Hawai'i at Hilo. Respondent TMT International Observatory filed a response to the Petitioners' Motion on August 21, 2023. The Petitioners' Motion is attached as **Exhibit 1**; the Respondents' Response is attached as **Exhibit 2**.

Upon consideration of the Motion and the Response, the Board agrees to reschedule the date for oral arguments, and will take note that the first request for rescheduling came from counsel for TMT International Observatory, LLC. The time allotted to each party for oral arguments will remain at fifteen minutes per party.

The Board will hold oral arguments regarding the issues raised in the motion, responses, and replies on Tuesday, November 7, 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.

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.

All other procedures outlined in Minute Order 6 remain in effect.

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



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

Aimee Barnes

AIMEE KELI'I BARNES, Board Member

DOREEN NĀPUA CANTO, Board Member

vernon char

VERNON CHAR, Board Member

Riley W. Smith

RILEY SMITH, Board Member

K.O.

KAREN ONO, Board Member



WESLEY KAIWI NUI YOON, Board
Member

DATED: Honolulu, Hawai'i:

Sep 11, 2023

RICHARD NAIWIEHA WURDEMAN 6015-0
Attorney at Law, A Law Corporation
Pauahi Tower, Suite 720
1003 Bishop Street
Honolulu, HI 96813
Telephone: (808) 536-0633
e-mail: RNWurdeman@RNWLaw.com

LAW OFFICE OF BIANCA ISAKI
BIANCA K. ISAKI 9977
1720 Huna Street, 401B
Honolulu, HI 96837
Telephone: (808) 927-5606
e-mail: bianca.isaki@gmail.com

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) 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

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
Natural Resources

Jesse K. Souki, Esq.
Associate General Counsel
University of Hawai'i
souki@hawaii.edu
Attorney for University of Hawaii, Hilo

Lincoln S.T. Ashida, Esq.
Newton J. Chu, Esq.
Torkildson, Katz, Moore & Harris
lsa@torkildson.com
njc@torkildson.com
Attorneys for Perpetuating Unique
Educational Opportunities (P.U.E.O)

J. Douglas Ing, Esq.
Brian A. Kang, Esq.
Ross Shinyama, Esq.
Summer H. Kaiawe, Esq.
Watanabe Ing LLP
douging@wik.com
bkang@wik.com
rshinyama@wik.com
skaiawe@wik.com
Attorneys for TMT
International
Observatory, LLC

Flores-Case Ohana
08ef80@gmail.com

Harry Fergstrom
hankhawaiian@yahoo.com

Richard L. DeLeon
kekaukike@msn.com

Mehana Kihoi
uhiwai@live.com

C.M. Kaho'okahi Kanuha
kahookahi@gmail.com

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

Cindy Freitas
makanainanqi@gmail.com

Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
The Temple of Lono

Kalikolehua Kanaele
akulele@yahoo.com

Stephanie-Malia Tabbada
s.tabbada@hawaiiantel.net

Tiffnie Kakalia
tiffniekakalia@gmail.com

Glen Kila
makakila@gmail.com

Dwight J. Vicente
dwightjvicente@gmail.com

Brannon Kamahana Kealoha
brannonk@hawaii.edu

William Freitas
kukulukuula@gmail.com

J. Leina'ala Sleightholm
leina.ala.s808@gmail.com

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"

Exhibit 1: Petitioner Mauna Kea Hui's Motion

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, 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.

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

K.O.

KAREN ONO, Board Member

DOREEN NĀPUA CANTO, Board Member

Riley Smith

RILEY SMITH, Board Member

Wesley Kaiwi Nui Yoon

WESLEY KAIWI NUI YOON, Board
Member

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

EXHIBIT "2"

Exhibit 1: Petitioner Mauna Kea Hui's Motion

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. 5;
a Declaratory Order Filed May)
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
Deputy Attorneys General
julie.h.china@hawaii.gov
*Attorneys for the Board of Land
and Natural Resources*

Jesse K. Souki
Associate General Counsel
University of Hawai'i
souki@hawaii.edu
*Attorney for University of
Hawai'i, Hilo*

Lincoln S.T. Ashida
Newton J. Chu
Torkildson, Katz, Moore, &
Harris
Isa@torkildson.com
nic@torkildson.com
*Attorneys for Perpetuating
Unique Educational
Opportunities (PUEO)*

Richard Naiwieha Wurdeman
RNWurdeman@RNWLaw
Bianca Isaki
bianca.isaki@gmail.com
*Attorneys for the Mauna Kea
Hui*

J. Douglas Ing
Brian A. Kang
Ross Shinyama
Summer H. Kaiawe
Watanabe Ing LLP
douging@wik.com
bkang@wik.com
rshinyama@wik.com
skaiawe@wik.com
*Attorneys for TMT
International
Observatory, LLC*

Harry Fergerstrom
hankhawaiian@yahoo.com

Richard L DeLeon
kekaukike@msn.com

Mehana Kihoi
uhiwai@live.com

C. M. Kaho'okahi Kanuha
kahookahi@gmail.com

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

Cindy Freitas
makanainangi@gmail.com

Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
The Temple of Lono

Kalikolehua Kanaele
akulele@yahoo.com

Stephanie-Malia:Tabbada
s.tabbada@hawaiiintel.net

Tiffnie Kakalia
tiffniekakalia@gmail.com

Glen Kila
makakila@gmail.com

Dwight J. Vicente
dwightjvicente@gmail.com

Brannon Kamahana Kealoha
brannonk@hawaii.edu

William Freitas
kukulukuula@gmail.com

J. Leina'ala Sleightholm
leina.ala.s808@gmail.com

DATED: Honolulu, Hawaii,
Jul 19, 2023

S Michael Cain

Michael Cain
Custodian of Records
Board of Land and Natural Resources

EXHIBIT “3”

Exhibit 1: Petitioner Mauna Kea Hui's Motion

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
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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.

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. 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, Table 3, “2021 Petition.”

No additional filings will be accepted in this case.



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

Aimee Elise Keli'i Barnes

AIMEE KELI'I BARNES, Board Member

Doreen

DOREEN NĀPUA CANTO, Board Member

Riley Smith

VERNON CHAR, Board Member

RILEY SMITH, Board Member



KAREN ONO, Board Member

WESLEY KAIWI NUI YOON, Board
Member

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

1210447.1

WATANABE ING LLP
A Limited Liability Partnership

J. DOUGLAS ING 1538-0
ROSS T. SHINYAMA 8830-0
SUMMER H. KAIawe 9599-0

First Hawaiian Center
999 Bishop Street, Suite 1250
Honolulu, Hawai'i 96813
Telephone No. (808) 544-8300
E-Mails: douging@wik.com; rshinyama@wik.com;
skaiawe@wik.com

Attorneys for
TMT INTERNATIONAL OBSERVATORY LLC

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF

The Petition of Mauna Kea Hui for a
Declaratory Order Filed May 24, 2021.

Case No. HA-22-02

**RESPONDENT TMT INTERNATIONAL
OBSERVATORY LLC'S RESPONSE TO
PETITIONERS MAUNA KEA HUI'S
MOTION TO MODIFY MINUTE ORDER
NO. 6; CERTIFICATE OF SERVICE**

**RESPONDENT TMT INTERNATIONAL OBSERVATORY LLC'S RESPONSE TO
PETITIONERS MAUNA KEA HUI'S MOTION TO MODIFY MINUTE ORDER NO. 6**

Respondent TMT International Observatory LLC ("TIO") hereby submits its response to Petitioners Mauna Kea Hui's Motion to Modify Minute Order No. 6 ("Motion"). TIO has no objection to rescheduling the October 6, 2023 hearing on the Petition given counsel's scheduling conflict. If the Board's preference is to reschedule the hearing on the Petition to another date in October, TIO's counsel, Ross T. Shinyama, Esq., is available on October 5, 16, 17, 18, 19, 20, 23, 24 and 31. Unfortunately, Mr. Shinyama will be traveling on the mainland for business

Received
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
August 21, 2023

during the Board's regularly scheduled meetings in October. Upon request, Mr. Shinyama can provide the Board with his availability for November and December 2023.

In the Motion, Petitioners request they be permitted 20 minutes for argument, instead of 15 minutes. Petitioners state they have no objection to the University of Hawai'i at Hilo having 20 minutes, but that all other parties, including TIO, should be limited to 15 minutes. Though TIO believes that 15 minutes should be sufficient for all parties to present their arguments, TIO does not object to the Board extending the time for oral argument from 15 minutes to 20 minutes for each party if it believes the extra time is appropriate. However, contrary to the inequitable position advocated by Petitioners, the allotted time should be the same for all parties. Either all parties have 15 minutes or all parties have 20 minutes. Moreover, Petitioners' attempt to limit the argument time for TIO and its counsel should be rejected. Indeed, this Board recognized the importance of TIO to this Petition when it stated in Minute Order No. 6 that TIO would argue first for Respondents.

Petitioners also request that the hearing on the Petition be held in-person as opposed to via Zoom. Initially, the Board has the discretion to hold this hearing via Zoom. Petitioners do not cite to a single authority that would require an in-person hearing. Given this, TIO leaves it to the Board's discretion as to whether this hearing should be held in-person or via Zoom.

Finally, Petitioners request Minute Order No. 6 be amended or supplemented to reflect that the originally scheduled July 28, 2023 hearing was rescheduled at Mr. Shinyama's request. TIO believes this is unnecessary as the record is clear as to the circumstances that ultimately resulted in the rescheduling of the July 28, 2023 hearing.

DATED: Honolulu, Hawaii, August 21, 2023.

/s/ Ross T. Shinyama

J. DOUGLAS ING

ROSS T. SHINYAMA

SUMMER H. KAIAWE

Attorneys for Respondent

TMT INTERNATIONAL OBSERVATORY LLC

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

The Petition of Mauna Kea Hui for a
Declaratory Order Filed May 24, 2021.

Case No. HA-22-02

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the following document:

Respondent TMT International Observatory LLC's Response to Petitioners Mauna Kea
Hui's Motion to Modify Minute Order No. 6; Certificate of Service

was duly served upon the following parties, by email, on August 21, 2023:

Julia China
Deputy Attorney General
Julie.h.china@hawaii.gov
*Attorney for the Board of Land
and Natural Resources*

Jesse K. Souki
Associate General Counsel
University of Hawai'i
souki@hawaii.edu
*Attorney for University of
Hawai'i, Hilo*

Lincoln S.T. Ashida
Newton J. Chu
Torkildson, Katz, Moore, &
Harris
lsa@torkildson.com
njc@torkildson.com
*Attorneys for Perpetuating
Unique Educational
Opportunities (PUEO)*

Harry Fergerstrom
hankhawaiian@yahoo.com

Richard L DeLeon
kekaukike@msn.com

Mehana Kihoi
uhiwai@live.com

C. M. Kaho'okahi Kanuha
kahookahi@gmail.com

Joseph Kualii Lindsey
Camara
kualiic@hotmail.com

Cindy Freitas
hanahanai@hawaii.rr.com

E. Kalani Flores
Flores-Case 'Ohana
08ef80@gmail.com

J. Leina'ala Sleightholm
Leina.ala.s808@gmail.com

Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
The Temple of Lono

Kalikolehua Kanaele
akule@yahoo.com

Stephanie-Malia:Tabbada
stabbada@hawaiiantel.net

Tiffnie Kakalia
tiffniekakalia@gmail.com

Glen Kila
makakila@gmail.com

Dwight J. Vicente
dwightjvicente@gmail.com

Brannon Kamahana Kealoha
brannonk@hawaii.edu

Richard Naiwieha Wurdeman
RNWurdeman@RNWLaw.com
Bianca Isaki
bianca.isaki@gmail.com
*Attorneys for the Mauna Kea
Hui*

Michael Cain
Michael.cain@hawaii.gov
Custodian of the Records

William Freitas
Pohaku7@yahoo.com and
kukulukuula@gmail.com

DATED: Honolulu, Hawai‘i, August 21, 2023.

/s/ Ross T. Shinyama
J. DOUGLAS ING
ROSS T. SHINYAMA
SUMMER H. KAIWE
Attorneys for Respondent
TMT INTERNATIONAL OBSERVATORY LLC

Index to Contested Case HA-22-02 regarding the petition of Mauna Kea Hui for a declaratory order filed May 24, 2021

- 001 05-24-21 Mauna Kea Hui's motion to reopen hearing to hear motion for confirm non-compliance with condition no. 4, or, alternatively, petition for declaratory orders concerning the same; Memorandum in support of motion; Declaration of Clarence Kukaukahi Ching; Exhibits 01-07; COS
- 002 10-18-21 Request from the Law Office of Bianca Isaki for ruling or hearing on Mauna Kea Hui's motion to re-open hearing to hear motion to confirm non-compliance with condition no. 4, or, alternately, petition for declaratory orders concerning the same, filed May 24, 2021 in Docket No. BLNR CC-16-002.
- 003 10-20-21 Minute Order No. 1; Exhibit A; COS
- 004 10-31-21 Temple of Lono brief in response to petitioners' motion; COS
- 005 11-03-21 Cindy Freitas brief in response to petitioners' motion; COS
- 006 11-04-21 TMT International Observatory LLC's memorandum in opposition to Mauna Kea Hui's motion to reopen hearing to hear motion to confirm non-compliance with condition no. 4, or, alternatively, petition for declaratory order concerning the same; Declaration of Fengchuan Liu; Declaration of Counsel; Exhibits "A" – "C"; COS
- 007 11-04-21 University of Hawai'i at Hilo's substantive joinder to TMT International Observatory LLC's memorandum in opposition to 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; COS
- 008 11-04-21 Perpetuating Unique Educational Opportunities' ("PUEO") substantive joinder to TMT International Observatory LLC's memorandum in opposition to 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; COS
- 009 11-08-21 Flores-Case 'Ohana filing re State of Hawai'i Board of Land and Natural Resources failure to properly serve Minute Order No. 1 to the Flores-Case 'Ohana: Declaration of E. Kalani Flores; Exhibit A; COS
- 010 11-12-21 Mauna Kea Hui's reply to TMT International Observatory LLC's memorandum in opposition, University of Hawai'i at Hilo's substantive joinder to TMT International Observatory LLC's memorandum in opposition, and Perpetuating Unique Educational Opportunities' substantive joinder to TMT

- International Observatory LLC's memorandum in opposition; Declaration of Shelley Muneoka; Exhibits 08-10; COS
- 011 11-19-21 Minute Order 2; COS
- 012 12-03-21 Flores-Case Ohana memorandum in support of 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; Declaration of E. Kalani Flores; Exhibits A – H; COS
- 013 12-10-21 TMT International Observatory LLC's request to supplement record; Declaration of counsel; Exhibit A; COS
- 014 12-13-21 Mauna Kea Hui's memorandum in opposition to TMT International Observatory LLC's request to supplement the record; COS
- 015 06-06-22 Mauna Kea Hui's motion to submit new evidence, or alternatively, to request judicial notice of the same; Declaration of counsel; Exhibit A; COS
- 016 06-09-22 TMT International Observatory LLC's response to Mauna Kea Hui's motion to submit new evidence, or alternatively, to request judicial notice of the same; Declaration of counsel; Exhibit A; COS
- 017 06-09-22 University of Hawai'i at Hilo's substantive joinder to TMT International Observatory LLC's response to Mauna Kea Hui's motion to submit new evidence, or alternatively, to request judicial notice of the same; COS
- 018 06-13-22 Perpetuating Unique Educational Opportunities' (PUEO) joinder to TMT International Observatory LLC's response to Mauna Kea Hui's motion to submit new evidence, or alternatively, to request judicial notice of the same; COS
- 019 06-13-22 Perpetuating Unique Educational Opportunities' (PUEO) joinder to University of Hawai'i at Hilo's substantive joinder to TMT International Observatory LLC's response to Mauna Kea Hui's motion to submit new evidence, or alternatively, to request judicial notice of the same; COS
- 020 06-17-22 Flores / Flores-Case 'Ohana Memorandum in support of Mauna Kea Hui's motion to submit new evidence, or alternatively, to request judicial notice of the same; Declaration of E. Kalani Flores; Exhibits A-E; COS
- 021 02-23-23 Second request from the Law Office of Bianca Isaki for ruling or hearing on Mauna Kea Hui's motion to re-open hearing to hear motion to confirm non-compliance with condition no. 4, or, alternately, petition for declaratory orders concerning the same, filed May 24, 2021 in Docket No. BLNR CC-16-002.
- 022 01-24-22 Minute Order 3 regarding TIO's request to supplement record; COS
- 023 07-03-23 Minute Order 3 setting time and date of oral arguments; COS

- 024 07-18-23 Disclosure statement of BLNR Chair Dawn Chang; COS
- 025 07-19-23 Minute Order 5 deferring date of oral arguments; COS
- 026 08-04-23 Minute Order 6 setting date for oral arguments; COS
- 027 08-17-23 Petitioners Mauna Kea Hui's motion to modify Minute Order No. 6'
Declaration of Richard Naiwieha Wurdeman; Exhibits "1" – "3"; COS
- 028 08-21-23 Respondent TMT International Observatory LLC's response to petitioners
Mauna Kea Hui's motion to modify Minute Order No. 6; COS
- 029 Minute Order 7

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the following documents: Minute Order 7

Was duly served upon the following parties, by email, on Sep 11, 2023

Julie China
Deputy Attorneys General
julie.h.china@hawaii.gov
*Attorneys for the Board of Land
and Natural Resources*

Jesse K. Souki
Associate General Counsel
University of Hawai'i
souki@hawaii.edu
*Attorney for University of
Hawai'i, Hilo*

Lincoln S.T. Ashida
Newton J. Chu
Torkildson, Katz, Moore, &
Harris
lsa@torkildson.com
njc@torkildson.com
*Attorneys for Perpetuating
Unique Educational
Opportunities (PUEO)*

Richard Naiwieha Wurdeman
RNWurdeman@RNWLaw
Bianca Isaki
bianca.isaki@gmail.com
*Attorneys for the Mauna Kea
Hui*

J. Douglas Ing
Brian A. Kang
Ross Shinyama
Summer H. Kaiawe
Watanabe Ing LLP
douging@wik.com
bkang@wik.com
rshinyama@wik.com
skaiawe@wik.com
*Attorneys for TMT
International
Observatory, LLC*

Harry Fergerstrom
hankhawaiiian@yahoo.com

Richard L DeLeon
kekaukike@msn.com

Mehana Kihoi
uhiwai@live.com

C. M. Kaho'okahi Kanuha
kahookahi@gmail.com

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

Cindy Freitas
makanainanqi@gmail.com

Flores-Case 'Ohana
08ef80@gmail.com

Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
The Temple of Lono

Kalikolehua Kanaele
akulele@yahoo.com

Stephanie-Malia:Tabbada
s.tabbada@hawaiiantel.net

Tiffnie Kakalia
tiffniekakalia@gmail.com

Glen Kila
makakila@gmail.com

Dwight J. Vicente
dwightjvicente@gmail.com

Brannon Kamahana Kealoha
brannonk@hawaii.edu

William Freitas
kukulukuula@gmail.com

J. Leina'ala Sleightholm
leina.ala.s808@gmail.com

DATED: Honolulu, Hawai'i,
Sep 11, 2023

S Michael Cain

Michael Cain
Custodian of Records
Board of Land and Natural Resources