

BOARD OF LAND AND NATURAL RESOURCES

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OFFICE OF CONSERVATION
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STATE OF HAWAII

2016 JUL 21 P 1:10

DEPT. OF LAND &
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)
_____)

CASE NO. BLNR-CC-16-002
Minute Order No. 13
(Hearing on Admission or
Intervention As A Party; Second
Pre-Hearing Conference)
Certificate of Service

MINUTE ORDER NO. 13

(Hearing on Admission or Intervention As A Party; Second Pre-Hearing Conference)

I. **Hearing on Admission or Intervention As A Party.** On June 17, 2016, a hearing on multiple motions, applications and/or requests for admission or intervention as a party or parties in the above-captioned matter, was held in Hilo, Hawai'i at 75 Aupuni Street, Conference Rooms A, B & C. Present at the hearing for the existing parties were Richard N. Wurdeman, Esq. for Mauna Kea Anaina Hou, for and with Clarence Kukauakahi Ching, Deborah J. Ward, Kealoha Pisciotta and Pua Case; and Timothy Lui-Kwan, Esq., Ian Sandison, Esq. and John P. Manaut, Esq. for the University of Hawai'i-Hilo ("UH-Hilo").

The following persons were present, in furtherance of their filed motion, application and/or request¹:

¹ Maile Taulii PhD, MPH an Danelle Cooper MPH submitted a Request to Be Admitted as a party in the contested Case Hearing for CDUP HA-3568 for the Thirty Meter Telescope n the Mauna Kea Lands, Ka'ohe, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009. However, their Request was withdrawn prior to the hearing on June 17, 2016.

J. Douglas Ing, Esq. for TMT International Observatory, LLC. (“TIO”)
Mehana Kihoi
C.M. Kaho`okahi Kanuha
Harry Fergerstrom
Joseph Kualii Lindsey Camara
Jennifer Leina`ala Sleightholm
Lincoln Ashida, Esq. for Perpetuating Unique Educational Opportunities,
Inc. (“PUEO”)
Maelani Lee
Cindy Freitas
William K. Freitas
Richard Maele DeLeon
Kalikolehua Kanaele
Stephanie-Malia:Tabbada
Tiffnie Kakalia
Glen Kila
Dwight J. Vicente
Brannon Kamahana Kealoha
Lanny Alan Sinkin for Lono Temple
Crystal F. West
Ivy McIntosh
Wilma H. Holi
Moses Kealamakia, Jr.
Patricia Ikeda

In addition, after calling the following names to determine whether or not the individuals were present, the following persons were determined to NOT be present despite having timely filed a motion, application and/or request:

Ana Nawahine-Kaho`opi`i
Edward K. Aiona
Wai`ala Ahn
Holonaikaiopuna Mikala-Jiro Fukutomi
Michael Lee
Keahi Tajon
Eric Hansen
Rick Cassiday, Trustee; Mary Lucas Estate
Linda Namauu
Joy Keahipuakauikawekiu Mills-Ferren
Michelle Cabalse

Mauna Kea Anaina Hou, Kealoha Pisciotta, Clarence Kukauakahi Ching, Flores-Case Ohana, Deborah J. Ward, Paul K. Neves and Kahea: The Hawaiian Environmental Alliance

(“Petitioners”), submitted memoranda in opposition to TIO’s Motion to Have TMT International Observatory, LLC Admitted as a Party in the Contested Case Hearing, and Opposition to Perpetuating Unique Educational Opportunities, Inc.’s Motion to Intervene, Dated May 16, 2016. UH-Hilo submitted a Response to the Requests to Intervene as a Party Pursuant to Minute Order No. 7. Essentially, UH-Hilo supported the intervention requests of TIO and PUEO and bade additional information regarding the remaining motions, applications and requests.

The standards for admission as a party in a contested case proceeding and standing, are set forth in HAR Section 13-1-31 (b) and (c). HAR § 13-1-31(b) provides the requirements for “mandatory admission”:

The following persons or agencies shall be admitted as parties:

- (1) All government agencies whose jurisdiction includes the land in question shall be admitted as parties upon timely application.
- (2) All persons who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the requested action that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted upon timely application.

HAR § 13-1-31(c) provides the requirements for “discretionary admission”:

Other persons who can show a substantial interest in the matter may be admitted as parties. The board may approve such requests if it finds that the requestor’s participation will substantially assist the board in its decision making. The board may deny any request to be a party when it appears that:

- (1) The position of the requestor is substantially the same as the position of a party already admitted to the proceedings; and
- (2) The admission of additional parties will not add substantially new relevant information or the addition will make the proceedings inefficient and unmanageable.

After full consideration of the record, arguments, representations, motions, applications, requests, oppositions thereto, and the applicable law, the Hearing Officer decided the following.

Motion to Have TMT International Observatory, LLC Admitted As A Party in the Contested Case Hearing. The TIO Motion is GRANTED due to TIO's substantial interest in the subject matter and because TIO's participation will substantially assist the Hearing Officer in her decision making.

Perpetuating Unique Educational Opportunities, Inc's Motion to Intervene. PUEO's Motion is GRANTED because PUEO's participation will substantially assist the Hearing Officer in her decision making.

Motions, Applications and/or Requests submitted by individuals who appeared at the hearing. Motions, applications and/or requests to intervene submitted by the following individuals are GRANTED because each individual's participation will substantially assist the Hearing Officer in her decision making:

Mehana Kihoi
C.M. Kaho`okahi Kanuha
Harry Fergerstrom
Joseph Kualii Lindsey Camara
Jennifer Leina`ala Sleightholm
Maelani Lee
Cindy Freitas*
William K. Freitas*
Richard Maele DeLeon
Temple of Lono by Lanny Sinkin**
Kalikolehua Kanaele
Stephanie-Malia:Tabbada
Tiffnie Kakalia
Glen Kila
Dwight J. Vicente
Brannon Kamahana Kealoha

*Cindy Freitas and William K. Freitas submitted their respective requests after the deadline. Upon inquiry, explanations were proffered by the requestors and the Hearing Officer found good cause existed for the late filings.

**Lanny Sinkin's representation of the Temple of Lono is allowed as an officer of the organization and subject to submission of a Declaration confirming the same.

Motions, Applications and/or Requests submitted by individuals who failed to appear.

The motions, applications and/or requests submitted by the following individuals who failed to appear at the hearing are DISMISSED for lack of prosecution:

Ana Nawahine-Kaho`opi`i
Edward K. Aiona
Wai`ala Ahn
Holonaikaiopuna Mikala-Jiro Fukutomi
Michael Lee
Keahi Tajon
Eric Hansen
Rick Cassidy, Trustee; Mary Lucas Estate
Linda Namaau
Joy Keahipuakauikawekiu Mills-Ferren
Michelle Cabalse

If any of the aforementioned individuals wishes to have their dismissal reconsidered, he or she may **file a Motion to Reconsider Dismissal, no later than August 1, 2016, to be heard in Hilo at the next hearing on August 5, 2016.**

Motions, Applications and/or Requests withdrawn by individuals appearing at the hearing. The following individuals withdrew their requests and will instead be called as Hearing Officer WITNESSES at the contested case hearing:

Crystal F. West
Ivy McIntosh
Wilma H. Holi
Moses Kealamakia, Jr.
Patricia Ikeda

Standing to Participate in the Contested Case. The Hawai'i Supreme Court has been especially liberal in its standing decisions in land use cases. *See, e.g., Life of the Land v. Land*

Use Commission, 63 Haw. 166 (1981). Based on the foregoing, the Hearing Officer finds that the following have standing to participate in the contested case hearing as parties:

University of Hawai`i – Hilo
 Mauna Kea Anaina Hou, Kealoha Pisciotto, Clarence Kukauakahi Ching,
 Flores-Case Ohana, Deborah J. Ward, Paul K. Neves, Kahea: The
 Hawaiian Environmental Alliance
 TMT International Observatory, LLC
 Perpetuating Unique Educational Opportunities, Inc.
 Mehana Kihoi
 C.M. Kaho`okahi Kanuha
 Harry Fergerstrom
 Joseph Kualii Lindsey Camara
 Jennifer Leina`ala Sleightholm
 Maelani Lee
 Cindy Freitas
 William K. Freitas
 Richard Maele DeLeon
 Temple of Lono by Lanny Sinkin
 Kalikolehua Kanaele
 Stephanie-Malia:Tabbada
 Tiffnie Kakalia
 Glen Kila
 Dwight J. Vicente
 Brannon Kamahana Kealoha

II. Second Pre-Hearing Conference.

Immediately following the hearing on motions, applications and/or requests, the parties participated in a Second Pre-Hearing Conference.

Dates/Deadlines. The following dates and deadlines are hereby Ordered:

July 18, 2016	Deadline for filing pre-hearing motions Deadline for filing Witness Lists (see attachment for format (if you have already filed your Witness List in another format, please resubmit using the attached format; the earlier date will be considered your filing date))
August 1, 2016	Deadline for filing Responses to pre-hearing motions Deadline for Objections to Witness Lists Deadline for filing Motion to Reconsider Dismissal

<p>August 5, 2016 (10:00 a.m. – 1:00 p.m.)</p>	<p>Hearing on pre-hearing motions Third Pre-hearing conference; attendance mandatory The hearing and conference will be held at: <p style="text-align: center;">YMCA 300 W. Lanikaula Street Hilo, Hawai`i 96720</p></p>
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Future Hearing/Meeting Site. Arranging for suitable hearing/meeting sites in Hilo has been challenging given the number of parties and interested persons. Upon inquiry by the Hearing Officer, no one had any objection to holding future hearings/meetings at a UH-Hilo facility if such arrangements can be accommodated and the facility is suitable.

Filing/Submission Procedures. All parties shall abide by the following procedures for filing and/or submission of documents, including but not limited to motions, objections, and other required papers.

1. Both the original hard copy plus one digital copy in pdf or doc format of the filing/submission must be received by the DLNR Office of Conservation and Coastal Lands (“OCCL”), 1151 Punchbowl Street, Room 131, Honolulu, Hawai`i 96813; no later than 4:00 p.m. on the deadline set forth. To the extent possible, digital copies of any submission must be contained in one single file.
2. In addition, copies of the filing/submission shall be sent to all other parties; and Deputy Attorney General Julie China, attorney for the Board of Land and Natural Resources (465 South King Street, Room 300, Honolulu, Hawai`i 96813). This service may be completed by e-mail.

Hearing and Site Inspection Dates. A site inspection is being planned for one day during the month of August. Depending on the number of witnesses and other logistics, several days during the month of October will be scheduled for the evidentiary contested hearing. These dates are tentative but parties should plan accordingly. Further discussion will be undertaken at the Third Pre-Hearing Conference on August 5, 2016.

DATED: Honolulu, Hawai`i, July 21, 2016.



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 13

CERTIFICATE OF SERVICE

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

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(original + digital copy)

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Hearing Officer

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Ching, Flores-Case 'Ohana, Deborah J.
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Signature:

Name (Print): Michael Cain, Custodian of the Records

Date: July 21, 2016