

BOARD OF LAND AND 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. 28
(Order Denying Mehana Kihoi's
Motion to Deny the Intervention
of Perpetuating Unique Educational
Opportunities as a Party in the
Contested Case Hearing (Doc. 98))

Certificate of Service

MINUTE ORDER NO. 28

**(Order Denying Mehana Kihoi's Motion to Deny the
Intervention of Perpetuating Unique Educational
Opportunities as a Party in the Contested Case Hearing
(Doc. 98))**

On August 5, 2016, a hearing on Mehana Kihoi's Motion to Deny the Intervention of Perpetuating Unique Educational Opportunities as a Party in the Contested Case Hearing (Doc. 98) ("Motion") was held in Hilo, Hawai`i at the YMCA, 300 W. Lanikaula Street.

The following persons were present:

Richard N. Wurdeman, Esq., Attorney for Mauna Kea Anaina Hou, et al. for and with Kealoha Pisciotta, Clarence K. Ching, Deborah Ward, Paul Neves, Pualani Case, E. Kalani Flores and Keomailani Van Gogh
Timothy Lui-Kwan, Esq.; John Manaut, Esq.; and Ian Sandison, Esq.; Attorneys for the University of Hawaii-Hilo ("UHH")
J. Douglas Ing, Esq. and Ross Shinyama, Esq., Attorneys for TMT International
Lincoln Ashida, Esq. and Newton Chu, Esq., Attorneys for Perpetuating Unique Educational Opportunities Inc. ("PUEO")
Lanny Sinkin for Temple of Lono
Harry Fergerstrom
Richard DeLeon
Mehana Kihoi
C.M. Kahookahi Kanuha

Received
Office of Conservation and Coastal Lands
2016 Oct 10 8:27 pm
Department of Land and Natural Resources
State of Hawaii

Joseph Camara
 Jennifer Leina`ala Sleightholm
 Maelani Lee
 Kalikolehua Kanaele
 Stephanie-Malia Tabbada
 Tiffnie Kakalia
 Glen Kila
 Dwight Vicente
 Brannon Kamahana Kealoha
 Cindy Freitas
 William Freitas

In addition to the Motion, the following submissions were considered:

DOC.	TITLE	COUNSEL/PARTY
145	TMT International Observatory, LLC's Opposition to Mehana Kihoi's Motion to Deny the Intervention of Perpetuating Unique Educational Opportunities as a Party to the Contested Case Hearing Dated July 18, 2016 (Doc. 98)	TMT International Observatory, LLC
155	Perpetuating Unique Educational Opportunities, Inc.'s Memorandum in Opposition to Mehana Kihoi's Motion to Deny the Intervention of Perpetuating Unique Educational Opportunities as a Party to the Contested Case Hearing; COS	Perpetuating Unique Educational Opportunities, Inc.
192	J. Leina`ala Sleightholm's Joinder to Mehana Kihoi's Motion to Exclude PUEO as a Party	J. Leina`ala Sleightholm
197	The University of Hawai`i at Hilo's Objection to J. Leina`ala Sleightholm's Joinder to Mehana Kihoi's Motion to Exclude PUEO as a Party, Filed August 10, 2016 (Doc. 192; COS	University of Hawai`i at Hilo

On October 5, 2016, the University of Hawai`i at Hilo filed a Proposed Minute Order No.

___ Denying the Motion ("Proposed Minute Order"; Doc. 308).¹ Three responses to the Proposed Minute Order were submitted. Cindy Freitas submitted Objection to All Minute Order

¹ At the 5th pre-hearing conference, held on October 3, 2016, the Hearing Officer requested that prevailing parties submit proposed minute orders relative to motions for which oral rulings were rendered but written Minute Orders were still outstanding. Deadline for submission of the proposed minute orders was set for Wednesday, October 5, 2016, 4:30 p.m. Deadline for the submission of responses to the proposed minute orders was set for Friday, October 7, 2016, 4:30 p.m.

No. ____ That Was Filed In The Document Library On October 5, 2016 Doc 322, 321, 320, 319, 318, 317, 316, 315, 314, 312, 311, 310, 309 and 308, on October 7, 2016 (“C. Freitas Objection”; Doc. 332 and Doc. 333)². Mehana Kihoi submitted a Proposed Minute Order No. ____ Objection to Proposed Minute Order No. ____ Denying Mehana Kihoi’s Motion to Deny the Intervention of Perpetuating Unique Educational Opportunities as a Party in the Contested Case Hearing (Doc. 98) (Doc. 327).

Based upon the Motion, all related and oral submissions from counsels and/or parties, the Proposed Minute Order and all submissions related thereto, all applicable law, the entire record having been considered by the Hearing Officer, IT IS HEREBY ORDERED that the Motion is DENIED.

The Motion essentially re-argues issues that were heard, considered and decided previously when the decision was made to allow PUEO to participate as a party. In addition, the Motion asserts that members of PUEO have conflicts of interest and PUEO should not be allowed to be a party in this contested case hearing for that reason. There is no basis in the law to preclude PUEO’s participation as a party on the conflict of interest bases asserted by movant.

Ms. Freitas’ objections to the Proposed Minute Order are based on her belief that “There for [sic] all **DOC 322, 321, 320, 319, 318, 318, 317, 316, 315, 314, 312, 311, 310, 309 AND 308** filed in the Document Library on October 5, 2016 is premature.” Citing the “14th Amendment” Ms. Freitas contends that her rights are somehow denied by the Proposed Minute Order. Her arguments are illogical. The appropriate time to ask for reconsideration of the Minute Order in question is after it is filed. It has not been filed yet. The filing of this Minute Order will trigger

² It appears that C. Freitas filed two identical documents; Doc. No. 332 is file-stamped “2016 Oct 07 at 11:44 a.m.” and Doc. No. 333 is file-stamped “2016 Oct 07 at 3:39”.

the process for reconsideration as set out herein.

Motion to Reconsider. A party, who believes it appropriate, may file a motion to reconsider using the procedure set out herein. Any Motion for Reconsideration shall not be used to reargue the motion or set out positions of a purely repetitious nature or to present factual or legal grounds that could or should have been presented at the original hearing. AMFAC, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114 (1992).

The deadline for submission of any **motion** to reconsider this minute order and/or the Order Setting Issues, is no later than **5 business days** after the date this Minute Order are filed in the Documents Library. Any **responses to motions to reconsider**, shall be submitted no later than **10 business days** after this motion and order are filed in the Documents Library; essentially 5 business days after the deadline for motions to reconsider.

Any Motion to Reconsider shall be considered a non-hearing motion unless otherwise designated by the Hearing Officer.

DATED: Honolulu, Hawai`i, October 10, 2016.



Judge Riki May Amano (Ret.)
Hearing Officer

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,
Hāmakua, Hawai'i, TMK (3) 4-4-015:009

BLNR Contested Case HA-16-02
Document title:
Minute Orders 28, 29, 30, 31, 32, 33

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced Minute Orders were served upon the following parties by the means indicated on October 11, 2016:

Carlsmith Ball LLP
isandison@carlsmith.com
tluikwan@carlsmith.com
jpm@carlsmith.com
Imcaneey@carlsmith.com
*Counsels for the applicant University
of Hawai'i at Hilo*

Kealoha Pisciotta and Mauna Kea
Anaina Hou
keomaivg@gmail.com

Clarence Kukauakahi Ching
kahiwaL@cs.com

E. Kalani Flores
ekflores@hawaiiintel.net

B. Pualani Case
puacase@hawaiiintel.net

Deborah J. Ward
cordylinecolor@gmail.com

Paul K. Neves
kealiikea@yahoo.com

Kahea: The Environmental Alliance
c.o. Bianca Isaki
bianca@kahea.org

Watanabe Ing LLP
rshinyama@wik.com
douging@wik.com
*Counsels for TMT International
Observatory, LLC*

Harry Fergerstrom
P.O. Box 951
Kurtistown, HI 96760

Mehana Kihoi
uhiwai@live.com

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

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

Torkildson, Katz, Moore, Hetherington
& Harris
isa@torkildson.com
njc@torkildson.com
*Counsels for Perpetuating Unique
Educational Opportunities (PUEO)*

J. Leina'ala Sleightholm
leinaala.mauna@gmail.com

Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
Representative for 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
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

Brannon Kamahana Kealoha
brannonk@hawaii.edu

Cindy Freitas
hanahanai@hawaii.rr.com

William Freitas
pohaku7@yahoo.com

Wilma H. Holi
P. O. Box 368
Hanapepe, HI 96716
Witness for the Hearing Officer

Moses Kealamakia Jr.
mkealama@yahoo.com
Witness for the Hearing Officer

Patricia P. Ikeda
peheakeanila@gmail.com
Witness for the Hearing Officer

Signature: 
Name: Michael Cain
Date: October 11, 2016