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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

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'ohē Mauka, Hāmākua,
Hawai'i, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

UNIVERSITY OF HAWAI'I AT HILO'S
**OPPOSITION TO SHELLEY
STEPHEN'S MOTION TO BE A
PARTY TO THE TMT CASE, FILED
DECEMBER 7, 2016 [DOC. 420];
CERTIFICATE OF SERVICE**

**UNIVERSITY OF HAWAI'I AT HILO'S OPPOSITION TO
SHELLEY STEPHEN'S MOTION TO BE A PARTY TO THE TMT CASE
FILED DECEMBER 7, 2016 [DOC. 420]**

Applicant UNIVERSITY OF HAWAI'I (“**University**”), by and through its undersigned counsel, submits its Opposition to the Shelley Stephens’ (“**Stephens**”) *Motion to be a Party in the TMT Case* (“**Renewed Motion**”) filed on December 7, 2016 [Doc. 420]. The University objects to the Motion on the grounds that the Motion is untimely and the Stephens has not demonstrated that the criteria stated in Hawai'i Administrative Rules (“**HAR**”) § 13-1-31(c) have not been met.

On May 16, 2016, the Hearings Officer in this proceeding held a pre-hearing conference to discuss, among other things, the handling of applications by non-parties who seek to be admitted as parties to this proceeding. At the conference, which was heavily publicized and attended by the public and media, the Hearings Officer set the deadline for intervention for May 31, 2016; the deadline for parties to respond to these requests for June 13, 2016; and the hearing on the applications for June 17, 2016. These deadlines were confirmed in Minute Order No. 7, filed on May 26, 2016, with the Department of Land and Natural Resources. At the close of the intervention period on May 31, 2016, thirty-two (32) individuals and/or organizations had submitted requests to intervene in this proceeding. Notably, Stephens did not submit an appropriate request to intervene during this time.

On June 3, 2016, Stephens submitted a letter containing comments regarding the contested case, which was not treated as a motion to intervene. On August 17, 2016, Stephens submitted a document, more clearly articulating her intention to request admission as a party (“**Motion**”) [Doc. 213]. The Motion was heard on August 29, 2016, during the Fourth Pre-Hearing Conference. *See* Minute Order 21 [Doc. 344]. Stephens was not present and the Motion was dismissed for failure to prosecute her request to be a party. *Id.* Two separate orders were issued, on October 10 and 13, 2016, stating that Stephens’ Motion had been dismissed and any motion for reconsideration must be filed with five (5) days of the issuance of the written order. *See id* and Minute Order No. 35 [Doc. 365].

Stephens has repeatedly failed to timely submit filings and the Hearings Officer should not indulge the Renewed Motion. Stephens has had ample time to submit appropriate requests to intervene and file motions for reconsideration. As such, the University objects to the Motion as

asks that it be denied.

However, in the event the Hearing Officer is inclined to entertain the Renewed Motion, the University further objects on the grounds that Stephens has failed to meet the criteria contained in HAR § 13-1-31(c). HAR§ 13-1-31(c) sets forth the requirements for “discretionary admission” into a contested case proceeding, as follows:

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*.

HAR § 13-1-31(c)(1) & (2) (emphases added). Stephens has not only failed to provide the Hearing Officer with sufficient information to make a finding as to these criteria, but the addition of a new party at this stage of the proceedings *will* very likely make the proceedings inefficient and unmanageable.

For these reasons, the University objects to the Motion and asks that it be denied.

DATED: Honolulu, Hawai‘i, December 9, 2016.



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Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

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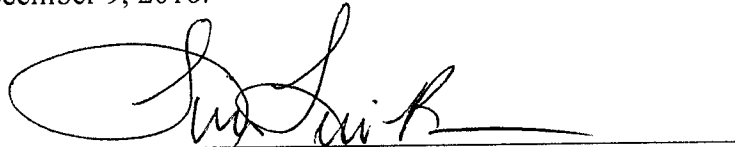
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**AMENDED CERTIFICATE OF
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HAWAI'I AT HILO'S OPPOSITION TO
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BE A PARTY TO THE TMT CASE,
FILED DECEMBER 7, 2016 [DOC. 420];
CERTIFICATE OF SERVICE, FILED
DECEMBER 9, 2016]**

**AMENDED CERTIFICATE OF SERVICE [RE: UNIVERSITY OF HAWAI'I
AT HILO'S OPPOSITION TO SHELLEY STEPHEN'S MOTION TO BE
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[DOC. 420]; CERTIFICATE OF SERVICE, FILED DECEMBER 9, 2016]**

The undersigned certifies that the University of Hawai'i at Hilo's Opposition to Shelley
Stephen's Motion to be A Party to the TMT Case, Filed December 7, 2016 [DOC. 420];
Certificate of Service, filed December 9, 2016 was served upon the following parties by email
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