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OFFICE OF CONSERVATION
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2017 APR 24 P 2:16

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Attorneys for

TMT INTERNATIONAL OBSERVATORY, LLC

BOARD OF LAND AND NATURAL RESOURCES

FOR THE 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, Hāmakua,
Hawaii'i, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

**TMT INTERNATIONAL OBSERVATORY,
LLC'S MOTION FOR CLARIFICATION
OR, IN THE ALTERNATIVE,
RECONSIDERATION RE: MINUTE
ORDER NO. 44 [DOC. NO. 553];
MEMORANDUM IN SUPPORT OF
MOTION; DECLARATION OF ROSS T.
SHINYAMA, ESQ.; EXHIBITS "1" – "7";
CERTIFICATE OF SERVICE**

**TMT INTERNATIONAL OBSERVATORY, LLC'S MOTION FOR
CLARIFICATION OR, IN THE ALTERNATIVE, RECONSIDERATION
RE: MINUTE ORDER NO. 44 [DOC. NO. 553]**

TMT International Observatory, LLC ("TIO"), by and through its undersigned counsel,
hereby respectfully moves for clarification or, in the alternative, reconsideration of Minute Order

No. 44 [Doc. No. 553] as to those Hearing Officer Witnesses who did not testify at the contested case hearing.

In Minute Order No. 44, the Hearing Officer correctly stated that “Ms. [Wilma] Holi [was] the only Hearing Officer witness to testify during the hearing.” Minute Order No. 44 at 8. TIO seeks to clarify Minute Order No. 44, specifically, by confirming that Hearing Officer Witnesses Moses Kealamakia, Jr., Ivy McIntosh, and Crystal F. West have waived any right to testify at the contested case hearing or to claim that they were deprived of an opportunity to provide their position and information as part of these proceedings.

This Motion is being e-mailed and mailed by Certified Mail to Hearing Officer Witnesses Kealamakia, McIntosh, and West at the following addresses¹:

Moses Kealamakia, Jr.
1059 Puku Street
Hilo, Hawaii 96720
mkealama@yahoo.com

Ivy McIntosh
67-1236 Panale‘a Street
Kamuela, Hawaii 96743
3popoki@gmail.com

Crystal F. West
P.O Box 193
Kapaau, Hawaii 96755
crystalinx@yahoo.com

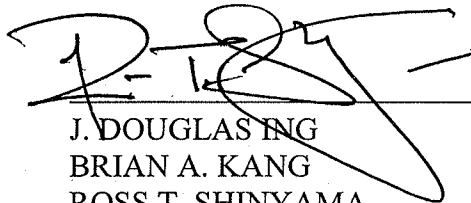
NOTICE IS HEREBY GIVEN TO Hearing Officer Witnesses Kealamakia, McIntosh, and West that, pursuant to Minute Order No. 44, responses to this Motion, if any, must be filed by “no later than 5 business days after any motion to reconsider []

¹ The following addresses were taken directly from the Certificate of Service to Minute Order No. 8 [Doc. No. 49].

Minute Order [No. 44] is filed in the Documents Library.” Minute Order No. 44² at 8. The “Documents Library” referred to in Minute Order No. 44 can be found at dlnr.hawaii.gov/mk/documents-library/. The originals of any responses or oppositions to this Motion “must be received by the DLNR Office of Conservation and Coastal Lands, 1151 Punchbowl Street, Room 131, Honolulu, Hawaii 96813; no later than 4:00 p.m. on the deadline set forth.” Id. at 9. Digital copies in pdf form of any responses should also “be sent to dlnr.maunakea@hawaii.gov, or delivered to the above office, on the same deadline.” Id.

This Motion is made pursuant to Hawai‘i Administrative Rules §§ 13-1-32, 34, and 35 and Minute Order No. 44, and based upon the attached Memorandum in Support of Motion, the attached Declaration of Ross T. Shinyama Esq., the exhibits attached thereto, and the entire record and files herein.

DATED: Honolulu, Hawaii, April 24, 2017.

A handwritten signature in black ink, appearing to read 'ROSS T. SHINYAMA', is written over a horizontal line.

J. DOUGLAS ING
BRIAN A. KANG
ROSS T. SHINYAMA
SUMMER H. KAIWE
Attorneys for TMT INTERNATIONAL
OBSERVATORY LLC

² Minute Order No. 44 is attached hereto as Exhibit “1” to the Declaration of Ross T. Shinyama, Esq.

BOARD OF LAND AND NATURAL RESOURCES
FOR THE 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'ohē Mauka, Hāmakua,
Hawai'i, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

**MEMORANDUM IN SUPPORT OF
MOTION**

MEMORANDUM IN SUPPORT OF MOTION

TMT International Observatory, LLC ("TIO"), by and through its undersigned counsel, hereby submits its Memorandum in Support of its Motion for Clarification or, in the Alternative, Reconsideration Re: Minute Order No. 44 [Doc. No. 553].

In Minute Order No. 44¹, the Hearing Officer correctly stated that "Ms. [Wilma] Holi [was] the only Hearing Officer witness to testify during the hearing." Minute Order No. 44 at 8. TIO seeks to clarify Minute Order No. 44, specifically, by confirming that Hearing Officer Witnesses Moses Kealamakia, Jr., Ivy McIntosh, and Crystal F. West have waived any right to testify at the contested case hearing or to claim that they were deprived of an opportunity to provide their position and information as part of these proceedings.

I. Background

On June 17, 2016, the Hearing Officer heard numerous motions/requests to intervene from individuals and entities seeking to be parties in this contested case hearing. During the hearing, several individuals withdrew their motions/requests to intervene and elected to instead

¹ Minute Order No. 44 is attached hereto as Exhibit "1" to the Declaration of Ross T. Shinyama, Esq. ("Shinyama Dec.")

be designated as “Hearing Officer Witnesses.” The following individuals were designated as “Hearing Officer Witnesses”:

- (1) Wilma H. Holi
- (2) Patricia Ikeda
- (3) Moses Kealamakia, Jr.
- (4) Ivy McIntosh
- (5) Crystal F. West

See Minute Order No. 13 at 5 [Doc. No. 115].

Ms. Ikeda withdrew as a Hearing Officer Witness on August 29, 2016. Ms. Holi submitted written direct testimony on February 14, 2017. She testified at the contested case hearing on February 23, 2017. Hearing Officer Witnesses Kealamakia, McIntosh, and West did not submit written direct testimony and did not testify at the contested case hearing.

The testimony portion of the contested case hearing concluded on March 2, 2017, over 45 days ago. The conclusion of the contested case hearing was widely publicized throughout the State of Hawai‘i. See Exhibit “2” to the Shinyama Dec.

On March 11, 2017, TIO’s counsel received an e-mail from non-party Nelson Ho claiming that Hearing Officer Witness Kealamakia was still waiting to testify at the contested case hearing. See Exhibit “3” to the Shinyama Dec. Intervenor J. Leina‘ala Sleightholm responded to Mr. Ho’s e-mail claiming that Hearing Officer Witness West was also still waiting to testify at the contested case hearing. See Exhibit “4” to Shinyama Dec. Neither e-mail was addressed to Michael Cain, anyone else at the Department of Land and Natural Resources (“DLNR”), or dlnr.maunakea@hawaii.gov, as has been the custom throughout this proceeding. Neither e-mail was addressed to the Hearing Officer or the Attorney General’s office.²

² Deborah Ward, Lanny Sinkin, and Yuklin Aluli also responded to Mr. Ho’s e-mail. See Exhibits “5” – “7” to the Shinyama Dec. Consequently, although TIO disputes that they would have standing to raise this issue, see infra footnote 3, the Petitioners/Intervenors have been aware

Mr. Ho does not represent Mr. Kealamakia. Ms. Sleightholm does not represent Ms. West.

Despite the conclusion of the testimony portion of the contested case hearing, and the passage of over a month since Mr. Ho's e-mail, neither the Petitioners/Intervenors³ nor any of the Hearing Officer Witnesses have raised as an issue the failure of Hearing Officer Witnesses Kealamakia, McIntosh, and West to testify at the contested case hearing to the Hearing Officer or DLNR or sought to provide any additional information for consideration.

On April 20, 2017, the Hearing Officer issued Minute Order No. 44 in which she stated that "Ms. [Wilma] Holi [was] the only Hearing Officer witness to testify during the hearing." Minute Order No. 44 at 8.

II. Discussion

Over 45 days have passed since the testimony portion of the contested case hearing concluded on March 2, 2017. Consequently, to the extent they still wanted to testify, Hearing Officer Witnesses Kealamakia, McIntosh, and West have failed to timely raise the issue of their failure to testify with the Hearing Officer. Because of the significant passage of time, and their failure to timely raise the issue with the Hearing Officer, Hearing Officer Witnesses Kealamakia,

of this issue involving the Hearing Officer Witnesses for over a month and have not raised the issue with the Hearing Officer. They also did not raise this issue before the close of the testimony portion of the contested case hearing on March 2, 2017. Consequently, in addition to lacking standing, the Petitioners/Intervenors have also waived and/or are otherwise estopped from arguing that the Hearing Officer Witnesses had a right to testify at the contested case hearing or to claim that the Hearing Officer Witnesses were deprived of an opportunity to provide their position and information as part of these proceedings.

³ TIO disputes that any of the Petitioners/Intervenors would have standing to raise the issue of the Hearing Officer Witnesses. If any of the Petitioners/Intervenors believed that the Hearing Officer Witnesses had information relevant to the material issues before the Hearing Officer, they should have called them as witnesses or otherwise raised any concern about those witnesses in the presentation of their respective cases or at the time that testimony of all remaining witnesses were scheduled by the Hearing Officer on January 26, 2017.

McIntosh, and West have waived any right to testify at the contested case hearing or to claim that they were deprived of an opportunity to provide their position and information as part of these proceedings.

TIO further submits that any testimony from Hearing Officer Witnesses would likely be cumulative and unduly repetitious of the evidence in the already voluminous record. See Hawai'i Revised Statutes § 91-10(1) (providing for the "exclusion of . . . unduly repetitious evidence"); Hawai'i Administrative Rules § 13-1-35 (providing the Hearing Officer with "discretion in the . . . rejection of evidence and the exclusion of . . . unduly repetitious evidence") and Doc. Nos. 27 (West); 28 (McIntosh); and 30 (Kealamakia). Indeed, TIO submits that there is nothing that Hearing Officer Witnesses Kealamakia, McIntosh, and West could possibly add that has not already been said or shown during the 44 days of hearing, which included the testimony of over 70 witnesses and the admission of hundreds of exhibits. Should they disagree with this Motion, the burden should be on those Hearing Officer Witnesses to demonstrate in response to this Motion why they have failed to raise this issue prior to now, what information they would have submitted and how that information is materially different from and not duplicative or cumulative of already admitted evidence.

Based on the foregoing, TIO asks this Hearing Officer to clarify Minute Order No. 44, specifically, by confirming that Hearing Officer Witnesses Moses Kealamakia, Jr., Ivy McIntosh, and Crystal F. West have waived any right to testify at the contested case hearing or to claim that they were deprived of an opportunity to provide their position and information as part of these proceedings.

III. Service of Motion on Hearing Officer Witnesses Kealamakia, McIntosh and West

The Motion is being e-mailed and mailed by Certified Mail to Hearing Officer Witnesses Kealamakia, McIntosh, and West at the following addresses⁴:

Moses Kealamakia, Jr.
1059 Puku Street
Hilo, Hawaii 96720
mkealama@yahoo.com

Ivy McIntosh
67-1236 Panale'a Street
Kamuela, Hawaii 96743
3popoki@gmail.com

Crystal F. West
P.O Box 193
Kapaau, Hawaii 96755
crystalinx@yahoo.com

NOTICE IS HEREBY GIVEN TO Hearing Officer Witnesses Kealamakia, McIntosh, and West that, pursuant to Minute Order No. 44, responses to this Motion, if any, must be filed by “no later than 5 business days after any motion to reconsider [] Minute Order [No. 44] is filed in the Documents Library.” Minute Order No. 44⁵ at 8. The “Documents Library” referred to in Minute Order No. 44 can be found at dlnr.hawaii.gov/mk/documents-library/. The originals of any responses or oppositions to this Motion “must be received by the DLNR Office of Conservation and Coastal Lands, 1151 Punchbowl Street, Room 131, Honolulu, Hawaii 96813; no later than 4:00 p.m. on the deadline set forth.” Id. at 9. Digital copies in pdf form of any responses should also “be

⁴ The following addresses were taken from the Certificate of Service to Minute Order No. 8 [Doc. No. 49].

⁵ Minute Order No. 44 is attached hereto as Exhibit “1” to the Declaration of Ross T. Shinyama, Esq.

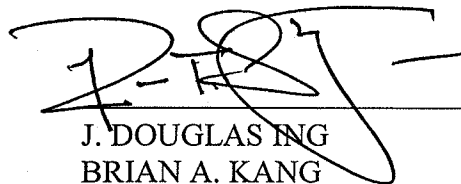
sent to dlmr.maunakea@hawaii.gov, or delivered to the above office, on the same deadline.”

Id.

IV. Conclusion

Based on the foregoing, TIO asks this Hearing Officer to clarify Minute Order No. 44, specifically, by confirming that Hearing Officer Witnesses Moses Kealamakia, Jr., Ivy McIntosh, and Crystal F. West have waived any right to testify at the contested case hearing or to claim that they were deprived of an opportunity to provide their position and information as part of these proceedings

DATED: Honolulu, Hawaii, April 24, 2017.

A handwritten signature in black ink, appearing to read 'J. Douglas Ing', is written over a horizontal line.

J. DOUGLAS ING
BRIAN A. KANG
ROSS T. SHINYAMA
SUMMER H. KAIawe
**Attorneys for TMT INTERNATIONAL
OBSERVATORY LLC**

BOARD OF LAND AND NATURAL RESOURCES

FOR THE 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'ohe Mauka, Hāmakua,
Hawai'i, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

**DECLARATION OF ROSS T. SHINYAMA,
ESQ.; EXHIBITS "1" – "7"**

DECLARATION OF ROSS T. SHINYAMA, ESQ.

I, ROSS T. SHINYAMA, hereby declare and state as follows:

1. I am an attorney licensed to practice law in the State of Hawaii and am one of the attorneys representing TMT International Observatory LLC in the above-captioned proceeding.
2. I make this Declaration based upon my personal knowledge and upon reliance of the files and records maintained by my office and in the normal and regular course of business.
3. Attached hereto as Exhibit "1" is a true and correct copy of Minute Order No. 44 [Doc. No. 553], without enclosures.
4. Attached hereto as Exhibit "2" are true and correct copies of articles from the Hawaii Tribune Herald, West Hawaii Today, Big Island Now.com, and the Star Advertiser publicizing the close of the testimony portion of the contested case hearing on March 2, 2017. The attached articles were accessed off the Internet and printed by me on April 21, 2017.
5. Attached hereto as Exhibit "3" is a true and correct copy of a March 11, 2017 e-mail that I received from Nelson Ho.
6. Attached hereto as Exhibit "4" is a true and correct copy of a March 11, 2017 e-mail that I received from J. Leina'ala Sleightholm.

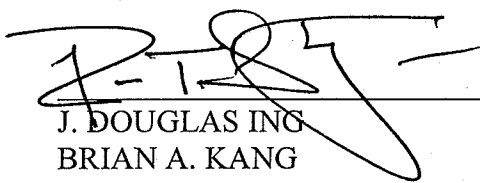
7. Attached hereto as Exhibit "5" is a true and correct copy of a March 11, 2017 e-mail that I received from Deborah Ward.

8. Attached hereto as Exhibit "6" is a true and correct copy of a March 12, 2017 e-mail that I received from Lanny Sinkin.

9. Attached hereto as Exhibit "7" is a true and correct copy of a March 15, 2017 e-mail that I received from Yuklin Aluli.

I, ROSS T. SHINYAMA, declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawai'i, April 24, 2017.



J. DOUGLAS INC
BRIAN A. KANG
ROSS T. SHINYAMA
SUMMER H. KAIWE
**Attorneys for TMT INTERNATIONAL
OBSERVATORY LLC**

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF)	CASE NO. BLNR-CC-16-002
)	
Contested Case Hearing Re Conservation District)	Minute Order No. 44
Use Application (CDUA) HA-3568 For the)	(Documentary Evidence)
Thirty Meter Telescope at the Mauna Kea Science)	
Reserve, Ka'ohē Mauka, Hamakua, Hawai'i)	
)	
)	
)	Certificate of Service

MINUTE ORDER NO. 44
(Documentary Evidence)

PROCESS. At the close of hearing on March 2, 2017, the last day of witness testimonies, a process for moving exhibits and written direct testimonies into evidence was established:

March 9, 2017 Deadline for Motions to move exhibits into evidence.

March 16, 2017 Deadline for responses, oppositions, joinders, etc. to Motions.

The Hearing Officer announced her intention to issue a Minute Order with rulings on March 23, 2017. Notwithstanding such intentions, the volume, extent and complexity of the exhibits, motions and responses necessitated significantly more time than anticipated.

LAW ON ADMISSIBILITY OF EVIDENCE.

In making decisions about the exhibits, whether objected to or not, the Hearing Officer followed the legal standards for admission of evidence; to wit, Hawai'i Revised Statutes ("HRS") §91-10(1) and HAR §13-1-35(a).

Received
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
2017 April 20 10:31 am

EXHIBIT "1"

HRS §91-10 Rules of evidence; official notice. In contested cases:

- (1) Except as provided in section 91-8.5, any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The agencies shall give effect to the rules of privilege recognized by law

* * *

The applicable Hawai'i Administrative Rule is:

§13-1-35 Evidence. (a) The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view of doing substantial justice.

* * *

MOTIONS AND RESPONSES.

The following table reflects all motions and responses submitted, reviewed and considered in rendering the decisions on evidence and written direct testimonies.

Doc #	Date	Party	Title
442	1/7/2017	UHH	The University of Hawaii at Hilo's motion to admit exhibits and written direct testimony into evidence; Memorandum in support of motion; Declaration of counsel; COS
451	1/23/2017 7	TIO	TMT International Observatory's motion to admit exhibits and written direct testimony into evidence; Memorandum in support of motion; Declaration of counsel
463	2/16/2017 7	Lono	Temple of Lono exhibits entered into evidence

	2/21/2017		
472	7	KAHEA	Kahea: The Environmental Alliance's motion to admit exhibits and written direct testimony into evidence; Memorandum in support of motion; COS
476	7	TIO	TMT International Observatory, LLC's supplement to its motion to admit exhibits and written direct testimony into evidence, filed January 23, 2017; COS
480	7	W Freitas	William Freitas motion to admit exhibits and written direct testimonies into evidence; Memorandum in support of motion; COS
481	7	C Freitas	Cindy Freitas motion to admit exhibits and written direct testimony into evidence; Memorandum in support of motion; COS
482	7	MKAH, Pisciotta, Neves	Mauna Kea Anaina Hou exhibits and written direct testimony offered into evidence
486	7	KAHEA	KAHEA's First Supplemental Motion to Admit Exhibits and WDT Into Evidence; Memorandum in Support of Motion; COS
483	7	Ward	Deborah Ward's Motion to Admit Exhibits and Written Direct Testimony Into Evidence; Memorandum in Support of Motion; COS
487	7	Flores-Case	Flores-Case 'Ohana's Motion to Admit Evidence and WDT Into Evidence; Memorandum in Support of Motion; COS
485	7	PUEO	Perpetual Unique Education Opportunities, Inc.'s Motion to Admit Written Direct Testimony and Exhibit; COS
488	3/1/2017	Ching	Clarence Kukauakahi Ching's Motion to Admit Exhibits and Written Direct Testimony Into Evidence; Memorandum In Support of Motion; COS
491	3/3/2017	Lono	Temple of Lono motion to admit opening statement, pre-filed testimony, and exhibits into evidence; Memorandum; COS
492	3/3/2017	C Freitas	Cindy Freitas First Supplemental Motion to Admit Exhibits and Written Direct Testimony Into Evidence; Memorandum in Support of Motion; COS
493	3/6/2017	W Freitas	William Freitas First Supplemental and Amended Motion to Admit Exhibits and Written Direct Testimony Into Evidence; Memorandum in Support of Motion; COS

494	3/6/2017	Fergerstrom	Fergerstrom Motion to move all documents in evidentiary hearing submittals, identified by letter "D" into evidence; memorandum of support; COS
495	3/7/2017	Camara	Joseph Kualii Lindsey Camara's motion to admit exhibits and written direct testimony into evidence; Memorandum in support of motion; COS
500	3/8/2017	Flores-Case	Flores-Case Ohana's motion to admit first supplemental exhibits into evidence; Memorandum in support of motion; COS
497	3/8/2017	Ching	Clarence Kukauakahi Ching's supplemental motion to admit exhibits and written direct testimony into evidence; COS
499	3/8/2017	Kanaele	Kalikolehua Kanaele motion for admittance of exhibits and prehearing statement as my written direct testimony into evidence ("motion"); Memorandum in support of motion
498	3/8/2017	Vicente	Dwight Vicente's motion to admit exhibits into evidence
506	3/9/2017	UHH	The University of Hawai'i at Hilo's supplemental motion to admit exhibits and written direct testimony into evidence and objection to admission of certain exhibits and written direct testimony; Memorandum in support; COS
508	3/9/2017	TIO	TMT International Observatory, LLC's second supplement to its motion to admit exhibits and written direct testimony into evidence; filed January 23, 2017; COS
505	3/9/2017	KAHEA	Kahea: The Environmental Alliance's second supplemental motion to admit exhibits and written direct testimony into evidence; Memorandum in support of motion; COS
501	3/9/2017	W Freitas	William Freitas second supplement motion to admit exhibits and written direct testimony into evidence
509	3/9/2017	MKAH, Pisciotto, Neves	Mauna Kea Anaina Hou, Kealoha Pisciotto, and Paul Neves motion to admit first supplemental exhibit list and written direct testimony into evidence; COS
507	3/9/2017	Ward	Deborah Ward's first supplemental motion to admit exhibits and written direct testimony into evidence; Memorandum in support of motion; COS
502	3/9/2017	Kihoi	Mehana Kihoi's motion to admit exhibits and written direct testimony into evidence; Memorandum in support of motion; COS
504	3/9/2017	Sleightholm	Motion to enter pre-hearing statement, witness testimony, and exhibits into evidence
503	3/9/2017	Kakalia	Tiffnie Kakalia's motion to admit exhibits and written direct testimony into evidence
506	3/9/2017	UHH	The University of Hawai'i at Hilo's supplemental motion to admit exhibits and written direct testimony into evidence and objection to admission of certain exhibits and written direct testimony; Memorandum in support; COS
510	3/16/2017	Ching	Clarence Kukauakahi Ching's motion in opposition to the admission of exhibits C-41 and C-42 in TMT International Observatory, LLC's second supplement to its motion to admit exhibits and written direct testimony into evidence, filed January 23, 2014; that was filed on March 9, 2017
511	3/16/2017	TIO	TMT International Observatory, LLC's memorandum in opposition to motions to admit exhibits and written direct testimonies; COS

512	3/16/201 7	C Freitas	Cindy Freitas motion in opposition to the admission of exhibits A-141, A-142, A-143, A-45, A-45a, A-41 and witness testimony Sara Collins, Ph.D, David Lassner, Jesse Alan Eiben, Ph.D, Dennis Charles Gosser and Pat Kaawaiolaa; COS
513	3/16/201 7	Flores-Case	Flores-Case Ohana's response to applicant University of Hawaii at Hilo's motion to admit exhibits into evidence; Memorandum in support of response; COS
514	3/16/207	UHH	University of Hawaii at Hilo's opposition to motions to admit exhibits and written direct testimony; COS

X

X

X

The following table reflects submissions in the Documents Library related to moving exhibits into evidence but filed after the deadline of March 16, 2017.

515	3/18/2017	Fergerstrom	Clarification of items identified as evidentiary submittals under letter "D" to be moved into evidence (Doc 494); Memo of support
517	3/20/2017	KAHEA	Errata to Kahea: The Environmental Alliance's motion to admit exhibits and written direct testimony into evidence filed February 21, 2017; COS
519	3/21/2017	C Freitas	First errata re: Cindy Freitas motion in opposition to the admission of exhibits A-141, A-142, A-143, and witness testimony Pat Kahawaiolaa; COS
520	3/21/2017	Fergerstrom	Opposition to University of Hawaii's opposition to motions to admit exhibits and written direct testimonies (Doc 514); Memorandum of support
521	3/21/2017	Fergerstrom	Opposition to TMT International Observatory opposition to motions to admit exhibits and written direct testimonies (Doc 511); Memorandum of support
525	3/22/2017	Camara	Joseph Kualii Lindsey Camara's response to UH's and TIO's opposition to motions to admit exhibits and written direct testimonies (Docs 511 and 516); Memorandum in support of response; COS

The late submissions were not reviewed or considered in the rendering of rulings on exhibits. This does not preclude movants from raising issues via motions to reconsider, if appropriate. All motions to reconsider must meet the standards set out in the "Motion to Reconsider" paragraph below.

RULINGS.

The rulings on exhibits moved into evidence are set out in the spreadsheets identified by moving party and attached hereto. Generally:

- Each and every exhibit appropriately identified by exhibit number has been ruled upon
- Objections to exhibits not moved into evidence were not ruled upon
- Exhibits improperly identified *en masse* were denied; e.g. “All B Series”
- Description of exhibits in the spreadsheets are taken from the motions except as indicated otherwise
- Pre-hearing statements were denied as they are not evidence except where movant had no written direct testimony filed in the Documents Library and the movant’s hearing testimony was reflected in his/her pre-hearing statement; in those cases, the Hearing Officer will discern testimony from argument when reviewing the pre-hearing statement received into evidence and determine the application and weight to be given the evidence, if any
- Due to the large number of exhibits, there may be duplicates; these are unintentional
- In some cases, general objections were raised, sometimes followed by objections to specific exhibits; all general objections were considered but are not reflected in the spreadsheets

The rulings on exhibits and receipt of evidence does not imply nor control the weight, if any, to be given to any specific piece of evidence. Parties may still argue that evidence, although received, should be disregarded.

HEARING OFFICER WITNESS WILMA HOLI EXHIBITS. On or about February 14, 2017, Hearing Officer Witness, Wilma Holi, submitted “Witness Wilma H. Holi’s exhibit list

and written direct testimony” to the Documents Library; exhibits were attached thereto. She has not moved her exhibits or written direct testimony into evidence.

Ms. Holi is the only Hearing Officer witness to testify during the hearing. She originally moved to be a party but opted to accept the Hearing Officer’s offer to be a Hearing Officer witness. Ms. Holi resides on Kaua’i and flew to Hilo for almost all of the hearings; her appearance was noted whenever she was present.

In the interest of substantial justice, the Hearing Officer intends to receive Ms. Ho’s Written Direct Testimony and her exhibits Z-1-A, Z-1-B, Z-1-C, Z-2, Z-5 and Z-6 into evidence. Exhibits Z-3 and Z-4 will not be received into evidence inasmuch as those exhibits were not submitted to the Documents Library.

This ruling on Ms. Holi’s exhibits and receipt of those exhibits into evidence, does not imply nor control the weight, if any, to be given to her exhibits. Parties may still argue that evidence, although received, should be disregarded.

MOTION TO RECONSIDER. A party, who believes it appropriate, may file a motion to reconsider. 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).

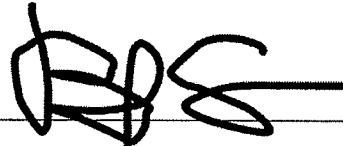
The deadline for submission of any **motion** to reconsider this minute order is no later than **5 business days** after the date this Minute Order is filed in the Documents Library. Any **responses to motions to reconsider**, shall be submitted no later than **5 business days** after any motion to reconsider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

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

FILING/SUBMISSION PROCEDURES. An original of the filing/submission **must be received** by the DLNR Office of Conservation and Coastal Lands, 1151 Punchbowl Street, Room 131, Honolulu, Hawai'i 96813; **no later than 4:00 p.m. on the deadline set forth.** (emphasis added). A digital copy in pdf form should be sent to dlnr.maunakea@hawaii.gov, or delivered to the above office, on the same deadline.

IT IS SO ORDERED.

DATED: Honolulu, Hawai'i, April 20, 2017.

A handwritten signature in black ink, appearing to be 'RMA', written over a horizontal line.

Judge Riki May Amano (Ret.)
Hearing Officer

Friday | April 21, 2017

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EXHIBIT "2"

Some of the protesters, who prefer to be called protectors, joined the quasi-judicial hearing as participants.

That included William Freitas, the final witness and "last pohaku standing," as TIO attorney Doug Ing affectionately called him.

Freitas helped build two ahu, or stone altars, on the proposed TMT site on the mountain's northern plateau. He said they were built to offer forgiveness of those who bulldozed the area rather than be an obstruction.

But removing them without approval, Freitas said, would be highly offensive.

"Do not touch this place," he requested. "Do not move forward on this project."

Mehana Kihoi, another participant in the contested case, said building the ahu with Freitas and her daughter was one of her most "powerful experiences."

"I know there will never be a last aloha aina," she told him.

Other parties included the original six petitioners opposed to the project, a group of Native Hawaiians who support the telescope, TIO and University of Hawaii at Hilo.

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That decision is being appealed.

As of the end of January, the contested case had cost the state \$275,758, according to the Department of Land and Natural Resources.

Email Tom Callis at tcallis@hawaiitribune-herald.com.

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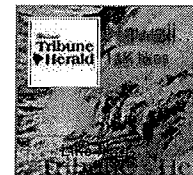


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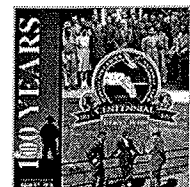


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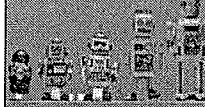
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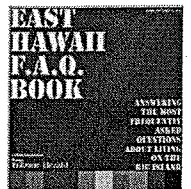
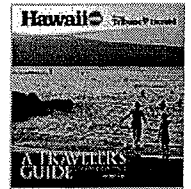
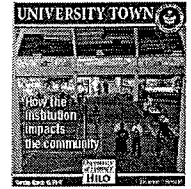
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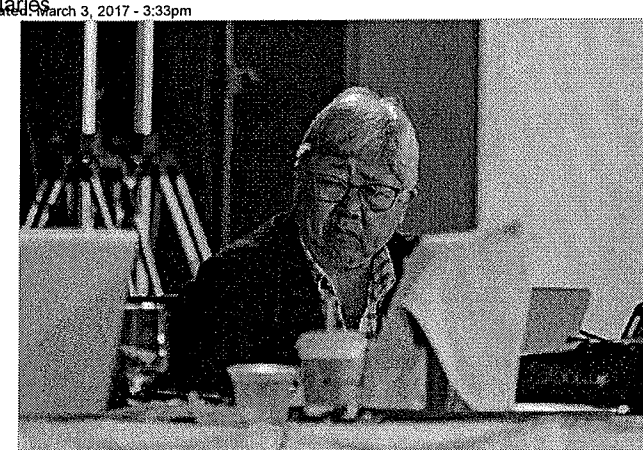
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TMT hearing concludes: Decision on contested case could still be months away

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By TOM CALLIS Hawaii Tribune-Herald

HILO — Witness testimony in the Thirty Meter Telescope contested case came to a close Thursday, four months after it began.

The extensive hearing received input from 71 witnesses, including Native Hawaiian cultural and religious practitioners, astronomers and government officials, regarding whether to reissue a construction permit to build the giant telescope atop Mauna Kea. Witness testimony started in October and occurred over 44 days of hearings.

A decision by hearings officer Riki May Amano could still be months away, leaving the \$1.4 billion project in limbo a year from a self-imposed construction deadline.

Next, court reporters face an enormous task of completing the written transcript. That could take five to six weeks, said Amano, a retired judge.

Afterward, the parties, which at the start totaled nearly two dozen, will have 30 days to submit their proposed decision, including findings of fact and conclusions of law. Amano said she will finish her decision following a two-week period in which objections to proposed orders can be made.

Scott Ishikawa, a spokesman for TMT International Observatory, said the organization behind the next-generation telescope remains hopeful construction can resume in a year. He couldn't comment on whether the April 2018 deadline might be extended before relocating to a backup site in the Canary Islands.

The contested case hearing is a replay of an earlier contested case held in 2011, which lasted a brief seven days in comparison, for the project's Conservation District Use Permit. The state Board of Land and Natural Resources approved the permit, but the state Supreme Court overturned that decision in late 2015 because a vote to approve the permit occurred before the hearing started.

That ruling followed large protests from Hawaiians, some of whom see construction atop of the mountain as desecration of a sacred space.

Some of the protesters, who prefer to be called protectors, joined the quasi-judicial hearing as participants. That included William Freitas, the final witness and "last pohaku standing," as TIO attorney Doug Ing affectionately called him.

Freitas helped build two ahu, or stone altars, on the proposed TMT site on the mountain's northern plateau. He said they were built to offer forgiveness of those who bulldozed the area rather than to be an obstruction.

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Email Tom Callis at tcallis@hawaiiitribune-herald.com.

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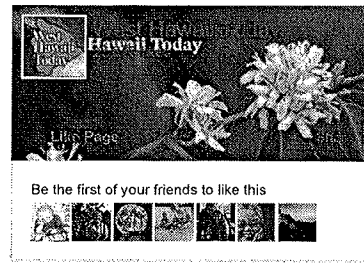
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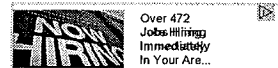
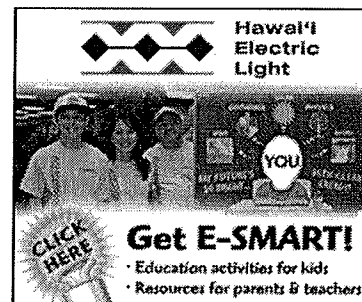
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TMT Hearing: Contested Case Hearing Concludes

By Aoloo Patao

Posted March 3, 2017, 03:00 PM HST

Updated March 3, 2017, 05:38 PM HST

An artist's rendering of the
Thirty Meter Telescope at
sunset. TMT photo.

No more witnesses will take the stand, and attorneys and petitioners will no longer conduct cross-examinations.

After 71 witnesses and 44 days of hearings—and a little over two hours past the 4:30 p.m. adjournment time on Thursday, March 2—the contested case hearing for the state Board of Land and Natural Resources Conservation District Use Application (CDUA) on the Thirty Meter Telescope (TMT) project came to an end.

Thursday marked the last day of the months-long hearing for which proponent parties and petitioners gathered at the Grand Naniloa Hotel in Hilo.

Retired Judge Riki May Amano is now left to assess all evidence produced from the hearing.

Before Judge Amano makes her final decision:

- Involved parties need to submit all exhibits into evidence
- Involved parties will need to file motions, objections and responses to aforementioned exhibits
- Judge Amano will identify all exhibits
- Proposed decisions will need to be made by proponent parties and petitioners

It is estimated that the transcripts from the case will fill about 50 volumes and take five to six weeks to put into printed form because of the length of case and difficulty of translating the Hawaiian language used throughout the case.

Judge Amano thanked the last witness, then addressed the gallery, thanking them for their patience, and noting that everyone had come a long way since the pre-hearing that began in May of 2016.

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TMT Hearing: Cultural Impact Assessment 'Falsified'



Aoloa Patao

My 'ohana is rooted in Honomu and Kohala, and I was born and raised in Kalaoa on Hawai'i Island. The art of writing intrigued me at an early age, which led me to pursue my B.A. in English with a focus on Creative Writing from the University of Hawai'i at Manoa. I began my journalism walk right out of college in 2009, while inconsistently chasing the dream of being a fiction novelist—I'm still chasing her, just more consistently. For now, you can catch me at any given school as a substitute teacher or tending to my yard in Niuli'i. The notion of engaging and informing this community through Big Island Now brings me a sense of excitement and responsibility that I am thoroughly enthusiastic about.

Source: <http://bigislandnow.com/2017/03/03/tmt-hearing-contested-case-hearing-concludes/>

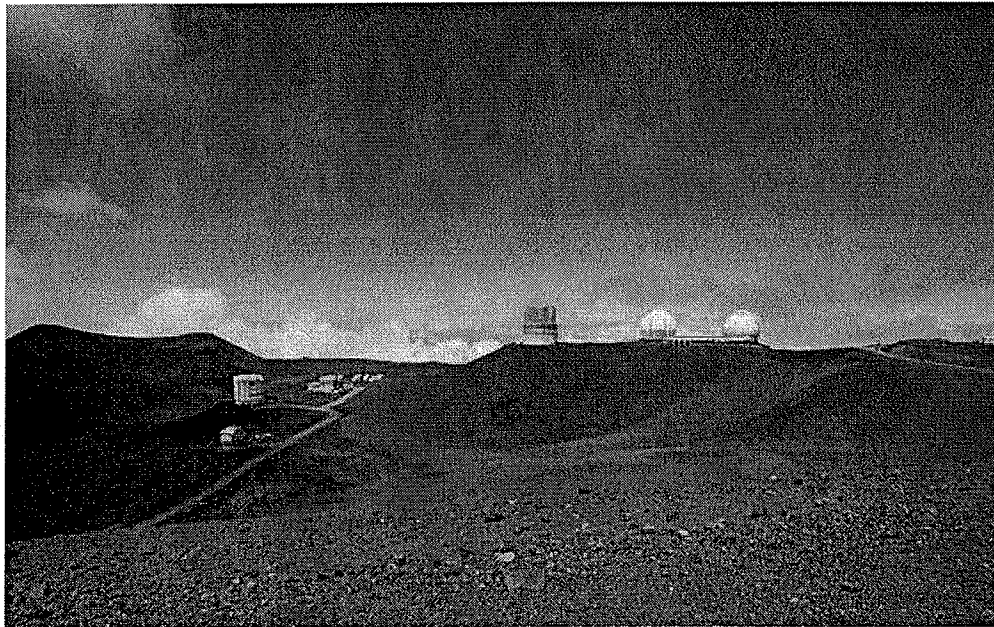


Hawaii News | Top News

Telescope hearings end on Big Isle after 44 days

Associated Press
Posted March 04, 2017
March 4, 2017

Updated March 4, 2017 12:42am



ASSOCIATED PRESS

Long-running hearings for whether the Thirty Meter Telescope can be built atop Mauna Kea wrapped up Thursday after 71 people testified, according to state Department of Land and Natural Resources spokesman Dan Dennison.

Long-running hearings for whether a giant telescope can be built atop Mauna Kea on Hawaii island have wrapped up. But it will be a while before a decision is made on a project that has prompted intense protests by those who believe it will desecrate sacred land.

Oftentimes emotional testimony concluded Thursday evening after 71 people testified over 44 days on the Big Island. Testifiers included Native Hawaiians who believe the project will harm cultural and religious practices on Mauna Kea, as well as Native Hawaiians who believe it will provide jobs and educational opportunities.

The hearings officer will recommend whether the state Land Board should grant a construction permit for the Thirty Meter Telescope. If there are exceptions filed to the hearings officer's recommendations, the Land Board will hear arguments before issuing a written decision.

"We remain hopeful that the state can issue a permit in a timely manner to start construction in April 2018," said Scott Ishikawa, a spokesman for the telescope.

This second round of contested-case hearings was necessary after the state Supreme Court invalidated an earlier permit issued by the board.

The state has spent nearly \$225,000 on the hearings, according to figures provided by state Department of Land and Natural Resources spokesman Dan Dennison.

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Charlene M. Moriwaki

From: Nelson Ho <nho.hoku@gmail.com>
Sent: Saturday, March 11, 2017 8:09 PM
To: Deborah J Ward; E.K. Flores; Keomailani Von Gogh; Ku Ching; Pua Case; Dexter Kaiama; J. Leina'ala Sleightholm; Mehana Kihoi; Lanny Sinkin; Yuklin Aluli; Timothy Lui-Kwan; J. Douglas Ing; Tom Callis; Nancy Cook-Lauer; Dave Corrigan; Moses Kealamakia; Brannon Kamahana Kealoha; Richard N. Wurdeman; Tiffnie Kakalia; Ross T. Shinyama; Lincoln Ashida; crystalinx@yahoo.com
Cc: Bianca Isaki; Candace Fujikane; Shaelene Kamaka'ala; Tom Peek; Paul Neves; Shelley Muneoka; Marti Townsend; Chandell Asuncion; Kerri Marks
Subject: Notice- Judge Amano Witness Moses Kealamakia wants to be heard
Attachments: TMT-DOC-30 moses kealamakia.pdf

Aloha All,

I have spoken tonight (Saturday 3/11/17) with Mr. Kealamakia. He is still waiting to be called to testify in the TMT as Judge Amano's witness. Mr. Kealamakia told me that he called DLNR's Honolulu office on Monday and left a message inquiring when he was to testify, but nobody got back to him all week. (Mr. Kealamakia's email address is included herein.)

My informal list of Judge Amano's witnesses is:

Wilma Holi
- she testified

,
Pat
Ikea - she withdrew

,
Moses Kealamakia
- he still wants to testify

,
Mr. or Mrs.
McIntosh
- ?

,
Crystal West
(Protector arrested in April 2015) - ?

As far as I know, only Mrs. Wilma Holi has given testimony. I do not recall any mention in the videos I saw, of the other witnesses.

Maybe Uncle Billy Freitas is not the last Pohaku standing?

Nelson

--
Nelson Ho
198 Hoku St.

EXHIBIT "3"

✓
Ph. 808 933-2650
Hilo, HI 96720

May 13, 2016

TO: BLNR Chair Suzanne D. Case & Board Members

FR: Moses Kealamakia Jr.
[address redacted]

RE: Request to be admitted as a party in the contested case hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohē, Hamakua District, Island of Hawai'i, TMK (3) 4-4-015:009

I'm requesting to be admitted as a party to the above contested case hearing pursuant to Hawaii Administrative Rules §13-1-31. This request should be granted because: (1) Requestor has a property interest in the lands of Mauna Kea through the exercise of Native Hawaiian traditional and customary practices; (2) Requestor will be affected by the proposed Thirty Meter Telescope project and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's position is not substantially the same as any existing parties to the proceedings; and (6) Requestor's participation will add substantially new relevant information and will not make the proceedings inefficient and unmanageable.

I am a multi-generation person of Waimea, Hawaii Island. My grandfather, great grandfather, and great-great grandfather ascended Mauna Kea often. In fact it was my great-great grandfather William Miller Lindsey that took Queen Emma to Lake Waiau. My grandfather John Kuakini Lindsey, upon hearing that there was going to be telescopes on top of Mauna Kea during the nineteen-sixties referred to it as "hana kolohe" or "bad deeds".

"I am a Native Hawaiian, descended of the native inhabitants of Hawai'i prior to 1778 and have lived in Hawai'i for fifty-five years."

Moses Kealamakia Jr.

Charlene M. Moriwaki

From: J. Leina'ala Sleightholm <leinaala.mauna@gmail.com>
Sent: Saturday, March 11, 2017 8:12 PM
To: Nelson Ho
Cc: E. Kalani Flores; Moses Kealamakia, Jr.; Nancy Cook-Lauer; Pua Case; J. Douglas Ing; Richard N. Wurdeman; Chandell Asuncion; Yuklin Aluli; Mehana Kihoi; Lincoln Ashida; Marti Townsend; Tom Peek; Brannon Kamahana Kealoha; Dave Corrigan; Bianca Isaki; Lanny Sinkin; Ku Ching; Timothy Lui-Kwan; Tom Callis; Deborah J Ward; Candace Fujikane; Kerri Marks; crystalinx@yahoo.com; Dexter Kaiama; Shelley Muneoka; Keomailani Von Gogh; Paul Neves; Shaelene Kamaka'ala; Ross T. Shinyama; Tiffnie Kakalia
Subject: Re: Notice- Judge Amano Witness Moses Kealamakia wants to be heard

Spoke with Crystal and she had not heard from anyone with a date to testify and didn't actively question when her turn was. She said didn't withdraw either.

On Mar 11, 2017 8:09 PM, "Nelson Ho" <nho.hoku@gmail.com> wrote:
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(Protector arrested in April 2015) - ?

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Maybe Uncle Billy Freitas is not the last Pohaku standing?

Nelson

EXHIBIT "4"

--
Nelson Ho
198 Hoku St.
Ph. 808 933-2650
Hilo, HI 96720

Charlene M. Moriwaki

From: Deborah Ward <dward@hawaii.edu>
Sent: Saturday, March 11, 2017 8:46 PM
To: J. Leina'ala Sleightholm
Cc: Nelson Ho; E. Kalani Flores; Moses Kealamakia, Jr.; Nancy Cook-Lauer; Pua Case; J. Douglas Ing; Richard N. Wurdeman; Chandell Asuncion; Yuklin Aluli; Mehana Kihoi; Lincoln Ashida; Marti Townsend; Tom Peek; Brannon Kamahana Kealoha; Dave Corrigan; Bianca Isaki; Lanny Sinkin; Ku Ching; Timothy Lui-Kwan; Tom Callis; Candace Fujikane; Kerri Marks; crystalinx@yahoo.com; Dexter Kaiama; Shelley Muneoka; Keomailani Von Gogh; Paul Neves; Shaelene Kamaka'ala; Ross T. Shinyama; Tiffnie Kakalia
Subject: Re: Notice- Judge Amano Witness Moses Kealamakia wants to be heard

I am wondering if her statement about witnesses without WDT on file were disqualified. Maybe that referred to her witnesses also. It would have courteous to inform "her" witnesses of that requirement. Deb

On Mar 11, 2017, at 8:12 PM, J. Leina'ala Sleightholm <leinaala.mauna@gmail.com> wrote:

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Nelson Ho
198 Hoku St.
Ph. 808 933-2650
Hilo, HI 96720

Charlene M. Moriwaki

From: Lanny Sinkin <lanny.sinkin@gmail.com>
Sent: Sunday, March 12, 2017 5:35 PM
To: Deborah Ward
Cc: J. Leina'ala Sleightholm; Nelson Ho; E. Kalani Flores; Moses Kealamakia, Jr.; Nancy Cook-Lauer; Pua Case; J. Douglas Ing; Richard N. Wurdeman; Chandell Asuncion; Yuklin Aluli; Mehana Kihoi; Lincoln Ashida; Marti Townsend; Tom Peek; Brannon Kamahana Kealoha; Dave Corrigan; Bianca Isaki; Ku Ching; Timothy Lui-Kwan; Tom Callis; Candace Fujikane; Kerri Marks; crystalinx@yahoo.com; Dexter Kaiama; Shelley Muneoka; Keomailani Von Gogh; Paul Neves; Shaelene Kamaka'ala; Ross T. Shinyama; Tiffnie Kakalia
Subject: Re: Notice- Judge Amano Witness Moses Kealamakia wants to be heard

The way judge Amano presented the witnesses initially was that people could choose to be a party or just to make a statement at the hearing. Those who wanted to make a statement, she would call as her witness. They would not be cross examined. There is therefore no basis for requiring a pre-final statement.

Sent from my iPhone

On Mar 11, 2017, at 8:46 PM, Deborah Ward <dward@hawaii.edu> wrote:

I am wondering if her statement about witnesses without WDT on file were disqualified. Maybe that referred to her witnesses also. It would have been courteous to inform "her" witnesses of that requirement. Deb

On Mar 11, 2017, at 8:12 PM, J. Leina'ala Sleightholm <leinaala.mauna@gmail.com> wrote:

Spoke with Crystal and she had not heard from anyone with a date to testify and didn't actively question when her turn was. She said didn't withdraw either.

On Mar 11, 2017 8:09 PM, "Nelson Ho" <nho.hoku@gmail.com> wrote:
Aloha All,

I have spoken tonight (Saturday 3/11/17) with Mr. Kealamakia. He is still waiting to be called to testify in the TMT as Judge Amano's witness. Mr. Kealamakia told me that he called DLNR's Honolulu office on Monday and left a message inquiring when he was to testify, but nobody got back to him all week. (Mr. Kealamakia's email address is included herein.)

My informal list of Judge Amano's witnesses is:

Wilma Holi
- she testified

,
Pat
Ikea - she withdrew

,
Moses Kealamakia
- he still wants to testify

EXHIBIT "6"

Mr. or Mrs.
McIntosh
- ?

Crystal West
(Protector arrested in April 2015) - ?

As far as I know, only Mrs. Wilma Holi has given testimony. I do not recall any mention in the videos I saw, of the other witnesses.

Maybe Uncle Billy Freitas is not the last Pohaku standing?

Nelson

--
Nelson Ho
198 Hoku St.
Ph. 808 933-2650
Hilo, HI 96720

Charlene M. Moriwaki

From: Yuklin Aluli <yuklin@kailualaw.com>
Sent: Wednesday, March 15, 2017 4:14 AM
To: Nelson Ho
Cc: Deborah J Ward; E.K. Flores; Keomailani Von Gogh; Ku Ching; Pua Case; Dexter Kaiama; J. Leina'ala Sleightholm; Mehana Kihoi; Lanny Sinkin; Timothy Lui-Kwan; J. Douglas Ing; Tom Callis; Nancy Cook-Lauer; Dave Corrigan; Moses Kealamakia; Brannon Kamahana Kealoha; Richard N. Wurdeman; Tiffnie Kakalia; Ross T. Shinyama; Lincoln Ashida; crystalinx@yahoo.com; Bianca Isaki; Candace Fujikane; Shaelene Kamaka'ala; Tom Peek; Paul Neves; Shelley Muneoka; Marti Townsend; Chandell Asuncion; Kerri Marks
Subject: Re: Notice- Judge Amano Witness Moses Kealamakia wants to be heard

The HO issued an order for all folks who were to continue to participate to attend on a given date or otherwise make contact. I know Kualii Camara and Leinaala Sleightholm filed pleadings and thereby testified and offered witnesses in the closing days.

Yuklin Aluli, Attorney at Law
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On Sat, Mar 11, 2017 at 8:08 PM, Nelson Ho <nho.hoku@gmail.com> wrote:
Aloha All,

I have spoken tonight (Saturday 3/11/17) with Mr. Kealamakia. He is still waiting to be called to testify in the TMT as Judge Amano's witness. Mr. Kealamakia told me that he called DLNR's Honolulu office on Monday and left a message inquiring when he was to testify, but nobody got back to him all week. (Mr. Kealamakia's email address is included herein.)

My informal list of Judge Amano's witnesses is:

Wilma Holli
- she testified

Pat
Ikea - she withdrew

EXHIBIT "7"

,
Moses Kealamakia
- he still wants to testify

,
Mr. or Mrs.
McIntosh
- ?

,
Crystal West
(Protector arrested in April 2015) - ?

As far as I know, only Mrs. Wilma Holi has given testimony. I do not recall any mention in the videos I saw, of the other witnesses.

Maybe Uncle Billy Freitas is not the last Pohaku standing?

Nelson

--
Nelson Ho
198 Hoku St.
Ph. 808 933-2650
Hilo, HI 96720

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

BLNR Contested Case HA-16-002

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

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

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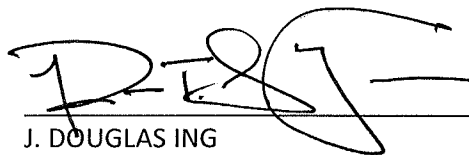
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DATED: Honolulu, Hawaii, April 24, 2017.



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