

BOARD OF LAND AND NATURAL RESOURCES

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STATE OF HAWAI'I

2017 MAY 17 P 2:19

IN THE MATTER OF)	CASE NO. BLNR-CC-16-002
)	<small>BLNR-CC-16-002 NATURAL RESOURCES STATE OF HAWAII</small>
Contested Case Hearing Re Conservation District)	MINUTE ORDER NO. 49
Use Application (CDUA) HA-3568 for the)	(ORDER DENYING PARTIES'
Thirty Meter Telescope at the Mauna Kea Science)	PETITION TO THE BOARD
Reserve, Ka'ohē Mauka, Hamakua, Hawai'i)	FOR ONLINE ACCESS TO THE
TMK (3) 4-4-015:009)	TRANSCRIPTS, FILED MAY 5,
)	2017 [DOC. 622] AND RELATED
)	DOCUMENT [DOC. 627];
)	CERTIFICATE OF SERVICE

MINUTE ORDER NO. 49

(ORDER DENYING PARTIES' PETITION TO THE BOARD FOR ONLINE ACCESS TO THE TRANSCRIPTS, FILED MAY 5, 2017 [DOC. 622] AND RELATED DOCUMENT [DOC. 627])

Kealoha Pisciotta ("Ms. Pisciotta") on behalf of herself, Mauna Kea Anaina Hou, Paul K. Neves, the Temple of Lono, the Flores-Case 'Ohana, Harry Fergerstrom, Cindy Freitas, William Freitas, Deborah J. Ward, Clarence Ching, Mehana Kihoi, and J. Leina'ala Sleightholm (together, the "parties"), filed a Petition to the Board for Online Access to the Transcripts [Doc. 622].¹ The motion asks the Board of Land and Natural Resources ("Board") to "produce the transcript of this proceeding online, in searchable form, that can be cut and pasted to all parties."

The Board elects to decide Ms. Pisciotta's petition without oral argument.

¹ The petition is only signed by Ms. Pisciotta and she is a member of Mauna Kea Anaina Hou. The other parties identified in the petition have not joined in the petition. Ms. Pisciotta is not an attorney, and therefore, she cannot represent any party other than Mauna Kea Anaina Hou. See Hawai'i Revised Statutes ("HRS") § 91-9(b)(5) and Hawai'i Administrative Rules ("HAR") § 13-1-10.

The contested case is governed by the Hawai‘i Administrative Procedures Act, HRS Chapter 91 and the Rules of Practice and Procedure for the Department of Land and Natural Resources, HAR, Title 13, Chapter 1, Subchapter 1. HAR § 13-1-32(d) provides that “[t]he presiding officer shall provide that a verbatim record of the evidence presented at any hearing is **taken** unless waived by all the parties.” (Emphasis added.) HRS § 91-9(f), however, provides that “[i]t shall not be necessary to **transcribe** the record unless requested for purposes of rehearing or court review.” (Emphasis added.) HAR § 13-1-32(d) provides that the parties “may obtain a certified transcript of the proceedings upon payment of the fee established by law for a copy of the transcript.”

Ms. Pisciotta’s petition has also been submitted to the Office of Information Practices as a request for government records. HRS § 92F-11(b) provides that “[e]xcept as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours.”

Although there is no law that requires that the record of the evidence presented at the contested case hearing be transcribed at this point in the contested case, or that it be made available in the libraries, the Board made this happen for the parties’ convenience and the benefit of the public. Fifty-one volumes of transcripts were copied at the Board’s expense and made available at five public libraries, at the Hilo Public Library, Kailua Kona Public Library, Thelma Parker Memorial Library in Waimea, and the Hawaii State Public Library in Honolulu on April 18, 2017, and at the Edward H. Mookini Library at the University of Hawai‘i at Hilo on April 22, 2017 [Doc. 551]. This was done at no cost to the parties. The transcripts are available for review during the libraries’ regular business hours. Copies of the transcripts can be obtained directly from the court reporters for the negotiated discounted rate of one dollar per page, or we

can provide a copy of the transcripts from the court reporters upon prepayment of one dollar per page. There are a total of 6,935 printed pages for all transcript volumes.

The Board's contracts with the court reporters are for two hard copies of the transcripts.² The Board presently has no hard copy of the transcripts as all of its copies are in the libraries. The Board will have an entire set of the transcripts at a later date, most likely a copy from one of the libraries. The cost for the transcripts, either hard copy or electronic, will be what is normally charged by the Department of Land and Natural Resources when responding to HRS Chapter 92F requests.

We have been informed that through the Office of Hawaiian Affairs ("OHA"), the transcripts prepared by McManus Court Reporter will be available online via a secure Dropbox to the parties to this petition as well as to C.M. Kaho'okahi Kanuha, Joseph Kualii Lindsey Camara, Kalikolehua Kanaele, KAHEA, Dwight J. Vicente, Tiffnie Kakalia, Brannon Kamahana Kealoha, and Wilma Holi. The Board also has electronic copies of transcript volumes 8, 9, 27, 28, 32, 33, and 40 from Island Court Reporting and Transcription Services and Ralph Rosenberg Court Reporters, which it has provided to OHA.

Even after the Board has a copy of the transcripts, neither the law relating to contested cases nor the law relating to government records requires that they be made available online. The law does not require that copies be made available in "searchable form, that can be cut and pasted to all parties."

The Parties' Petition for Online Access to Transcripts is **HEREBY DENIED**.

² The extra copies for the libraries were made with the court reporters' permission.

DATED: Honolulu, Hawaii, May 17, 2017.

Suzanne D. Case

SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

STANLEY H. ROEHRIG, Member

/s/ Keith "Keone" Downing
KEITH "KEONE" DOWNING, Member

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JAMES A. GOMES, Member

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THOMAS OI, Member

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SAMUEL "OHU" GON III, Member

CHRISTOPHER YUEN, Member

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

BLNR Contested Case HA-16-02
Document title: **Minute Orders 49**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by email (when indicated) on May 17, 2017 and by regular mail on May 18, 2017:

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Date: *May 17, 2017*