

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)
)
_____) **Certificate of Service**

CASE NO. BLNR-CC-16-002
Minute Order No. 64
(Order Denying Motion to be
a Party to the TMT Case by
Shelley Stephens (Mahi-Hanai)
(Doc. 420))

MINUTE ORDER NO. 64

**(Order Denying Motion to be a Party to the TMT Case by
Shelley Stephens (Mahi-Hanai) (Doc. 420))**

On December 12, 2016, a hearing on Motion to be a Party to the TMT Case by Shelley Stephens (Mahi-hanai) (Doc. 420) (“Motion”) was held in Hilo, Hawai`i at the Grand Naniloa Hotel, 93 Banyan Drive. The Motion was filed on December 7, 2016.

The following persons were present:

Kealoha Pisciotta in her individual capacity and for Mauna Kea Anaina Hou
 (“MKAH”) with Paul Neves and Keomailani Van Gogh
Clarence K. Ching
Deborah Ward
E. Kalani Flores for the Flores-Case Ohana
Timothy Lui-Kwan, Esq. and Ian Sandison, Esq., Attorneys for the University of
Hawaii-Hilo (“UHH”)
Ross Shinyama, Esq., Attorney for TMT International Observatory, LLC. (“TIO”)
Lincoln Ashida, Esq., Attorney for Perpetuating Unique Educational
Opportunities Inc. (“PUEO”)
Kalikolehua Kanaele
Lanny Sinkin for Temple of Lono with Kahuna Nobriga
Dexter Kaiama, Esq., for the Hawaiian –Environmental Alliance (“KAHEA”)
Harry Fergerstrom
Mehana Kihoi
Cindy Freitas

Received
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
2017 June 4 3:17 pm

Dwight J. Vicente
 Shelley Stephens
 Tiffnie Kakalia
 Wilma Holi (Witness)

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

Doc. #	Filed	Party	Title
423	9-Dec-16	UHH	University of Hawai'i at Hilo's Opposition to Shelley Stephen's (sic) Motion to be a Party to the TMT Case, Filed December 7, 2016 [Doc 420]
425	11-Dec-16*	TIO	TMT International Observatory, LLC's Joinder to UH-Hilo's Opposition to Shelley Stephen's (sic) Motion to be Admitted as a Party to the CCH. *Filed by the Office of Conservation and Coastal Lands on 12/12/16
426	14-Dec-16	UHH	Proposed Minute Order No._ denying Shelley Stephen's motion to be a party to the TMT case [Doc. 420]

Consideration of this Motion necessarily includes Ms. Stephens' actions that pre-dated the filing of her Motion. On August 17, 2016, non-party Shelley Stephens submitted a hand-written "Request to be TMT Party." ("August Request") (Doc. 213) Ms. Stephens attached thereto a hand-written memo addressed to "DLNR/BLNR TMT Contested Case hearing (Mauna Kea), Re: Comments." The memo bears a file-stamp showing "Received Office of Conservation and Coastal Lands, 2016 Jun-3 A 11:35." The memo had not been uploaded to the Documents Library because it did not appear to be a document intended for that purpose; e.g. Motion, Request. The August Request was uploaded and treated as a motion to join the contested case hearing as a party.

At a hearing on August 29, 2016, set for the purpose of addressing remaining pre-hearing motions¹, Ms. Stephens was not present. Minute Order No. 21, reflects the actions taken by this tribunal with regard to Ms. Stephens' request to be a party; her request was dismissed for failure to prosecute her request. (Doc. 344 at page 2 "Stephens Request")

On December 7, 2016, Ms. Stephens' filed this Motion. It was heard on December 12, 2016 with Ms. Stephens present. She argued that she should be allowed to be a party because she has important information relevant to the proceedings, could not attend previous hearings or submit timely documents. Vol. 15, 8:10-13:24. Kalikolehua Kanaele spoke in support of Ms. Stephens' request: "TIO, University, a lot of people that say the same thing, too. So I think she has a little bit more research experience and she should be put in here is what I think." Vol. 15, 15:8-15:16. UHH asserted that Shelley Stephens' Motion is untimely and that she would not qualify for discretionary admission as a party under HRS §13-1-31(c). Vol. 15, 14:5-24.

The Hearing Officer ruled that the Motion was untimely and that Ms. Stephens does not meet the requirements for admission under HRS §13-1-31(c). Vol. 15, 15:19-16:7. As the prevailing party, the Hearing Officer asked UHH to prepare the Order Denying Shelley Stephens' Motion to be a Party to the TMT Case (Doc. 429).

On December 14, 2016, the University of Hawai'i at Hilo filed a Proposed Minute Order No. __ Denying Shelley Stephen's (sic) Motion to be a Party to the TMT Case [Doc. 420] ("Proposed Minute Order"). (Doc. 426) There were no responses to the Proposed Minute Order.

Based upon the Request, all related and oral submissions from counsels and/or parties, all applicable law, the entire record having been considered by the Hearing Officer,

¹ The pre-hearing motions schedule had been set at the Second Pre-Hearing Conference, held on June 17, 2016. Minute Order No. 13 (Doc. 115).

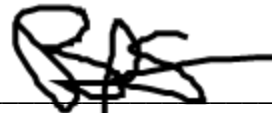
IT IS HEREBY ORDERED that the Request is DENIED.

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 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 **10 business days** after this order is 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, June 5, 2017.



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

BLNR Contested Case HA-16-02
Document title: **Minute Orders 60-67**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by email (when indicated) on June 5, 2017 and by regular mail on June 5, 2017:

Carlsmith Ball LLP
Ian Sandison, John P. Manaut, Lindsay N. McAneeley
1001 Bishop Street
ASB Tower, Suite 2200
Honolulu, HI 96813
isandison@carlsmith.com
jpm@carlsmith.com
lmcaneley@carlsmith.com
Counsel for the Applicant University of Hawai'i at Hilo

Law Offices of Yuklin Alulu
415-C Uluniu Street
Kailua, HI 96734
yuklin@kailualaw.com
Co-Counsel for Kahea

Dexter K. Kaiama
111 Hekili Street, #A1607
Kailua, HI 96734
cdex@hotmail.com
Co-Counsel for Kahea

Kealoha Pisciotta and Mauna Kea Anaina Hou
PO Box 5864
Hilo, HI 96720
keomaivg@gmail.com

Clarence Kukauakahi Ching
64-823 Mamalahoa Hywy
Kamuela HI 96743
kahiwaL@cs.com

Flores-Case 'Ohana
E. Kalani Flores, B. Pualani Case
PO Box 6918
Kamuela, HI 96743
ekflores@hawaiiantel.net

Deborah J. Ward
PO Box 918
Kurtistown, HI 96760
cordylinecolor@gmail.com

Paul K. Neves
380 Nahale-a Avenue
Hilo, HI 96720
kealiikea@yahoo.com

Watanabe Ing LLP
J. Douglas Ing, Ross T. Shinyama, Summer H. Kiawe
First Hawaiian Center 999 Bishop Street, 23rd Floor
Honolulu, HI 96813
rshinyama@wik.com
douging@wik.com
Counsel for TMT International Observatory, LLC

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

Mehana Kihoi
PO Box 393
Honaunau, HI 96726
uhiwai@live.com

C. M. Kaho'okahi Kanuha
77-6504 Maile St
Kailua Kona, HI 96740
kahookahi@gmail.com

Joseph Kualii Lindsey Camara
192 Kualua Pl.
Hilo, 96720
kualiic@hotmail.com

Torkildson, Katz, Moore, Hetherington & Harris
Attn: Lincoln S. T. Ashida
120 Pauahi Street, Suite 312
Hilo, HI 96720-3084
lsa@torkildson.com
njc@torkildson.com
*Counsel for Perpetuating Unique Educational
Opportunities (PUEO)*

J. Leina'ala Sleightholm
P.O. Box 383035
Waikoloa, HI 96738
leinaala.mauna@gmail.com

Lanny Alan Sinkin
1429 North 17th Street
Bismarck, North Dakota 58501-2858
lanny.sinkin@gmail.com
Representative for The Temple of Lono

Kalikolehua Kanaele
4 Spring Street
Hilo, HI 96720
akulele@yahoo.com

Stephanie-Malia:Tabbada
P O Box 194,
Naalehu, HI 96772
s.tabbada@hawaiiantel.net

Tiffnie Kakalia
549 E. Kahaopea St.
Hilo, HI 96720
tiffniekakalia@gmail.com

Glen Kila
89-530 Mokiawe Street
Waianae, HI 96792
makakila@gmail.com

Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

Brannon Kamahana Kealoha
89-564 Mokiawe Street
Nanakuli, HI 96792
brannonk@hawaii.edu

Cindy Freitas
PO Box 4650
Kailua Kona, HI 96745
hanahanai@hawaii.rr.com

William Freitas
PO Box 4650
Kailua Kona, HI 96745
pohaku7@yahoo.com

Wilma H. Holi
P. O. Box 368
Hanapepe, HI 96716
w_holi@hotmail.com
Hearing Officer's witness

Moses Kealamakia Jr.
1059 Puku Street
Hilo, HI 96720
mkealama@yahoo.com
Hearing Officer's witness

Signature:

Name: Michael Cain

Date:

June 5, 2017