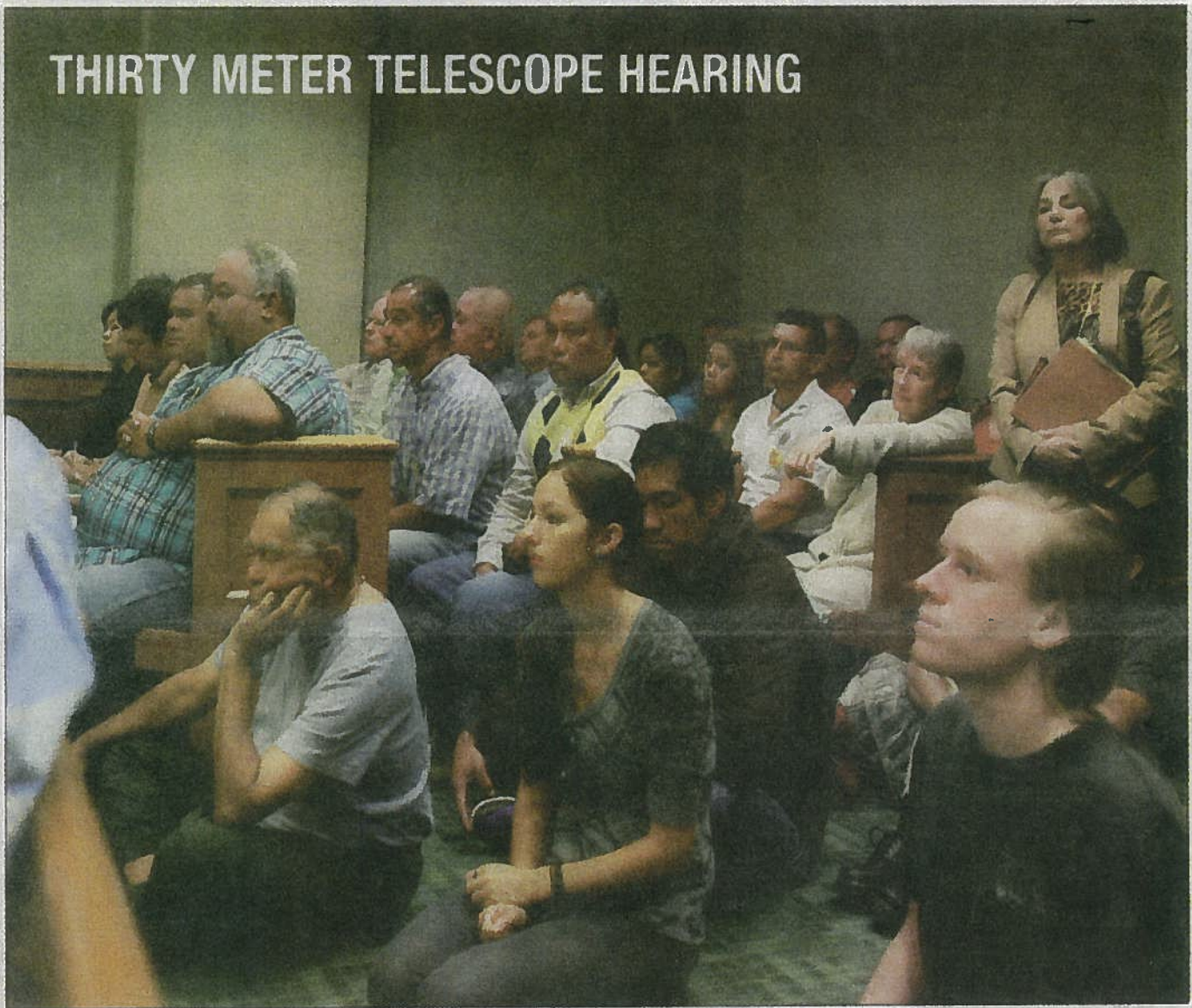


THIRTY METER TELESCOPE HEARING



HOLLYN JOHNSON/Tribune-Herald

All of the seats in the gallery are filled Thursday morning during the TMT hearing in Hilo Circuit Court.

Part of the case

Nakamura grants TMT Corp. request

University of Hawaii at Hilo astronomy students Emily Peavy, left, and Kristen Laguana wear buttons in support of TMT after the hearing Thursday in Hilo Circuit Court.



HOLLYN JOHNSON/Tribune-Herald

By MEGAN MOSELEY
Tribune-Herald staff writer
A recent ruling by the Supreme Court of Hawaii regarding the issuance of a conservation district land use permit for the construction of a telescope on Maui might influence the case involving plans for one of

the world's largest telescopes atop Mauna Kea. According to court documents, the state Supreme Court ruled Dec. 13, 2013, the Board of Land and Natural Resources should have had a contested case

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hearing prior to approving a permit for a large telescope currently under construction on the summit of Maui's Haleakala. Native Hawaiian group Kilakila O Haleakala had been fighting against the construction since 2010.

Similar to the Kilakila O Halealaka case, six petitioners opposing the \$1.3 billion Thirty Meter Telescope project on Mauna Kea are arguing the state violated due process when issuing the conservation district land use permit.

According to an article previously published in the Tribune-Herald, BLNR granted approval of the TMT's conservation district use permit at its meeting in Honolulu on Feb. 25, 2011, while at the same time requiring a contested case hearing. The appellants argue the hearing should have been before the approval. In order for a conservation district land use permit to be issued, the request must meet eight specific criteria.

Legal counsel for parties involved with the TMT project met in Judge Greg Nakamura's courtroom Thursday morning.

Richard Naiwieha Wurdeman represented the six appellants, Julie China represented appellee BLNR, and Jay Stuart Handlin represented the University of Hawaii at Hilo, sub-leaser for the project. New to the courtroom was Douglas Ing, who was acting as legal counsel for TMT Corp., which requested to file an amicus curiae brief, also known as a friends of the court brief.

An amicus curiae involves an entity that might not have a direct relationship to the lawsuit, and is not listed as a party, but someone who has precedential interest in the outcome. The court sometimes allows those with similar interests to make an argument to the court, even though they are not part of the direct outcome.

"TMT has been in planning for over 10 years. Time and resources are running out. TMT is asking that it be allowed to be a part of the case," Ing told Nakamura.

China and Handlin responded by supporting

Requirements for the issuance of a conservation district land use permit

13-5-30 under the Hawaii Administrative Rules Title 13 Department of Land and Natural Resources Subtitle 1 Administration Chapter 5 Conservation District. The law requires applicants for land use permits in conservation districts to meet the following criteria:

- 1- The proposed land use is consistent with the purpose of the conservation district.
- 2- The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.
- 3- The proposed land use complies with provisions and guidelines contained in chapter 205A, HRS, entitled "Coastal Zone Management," where applicable.
- 4- The proposed land use will not cause substantial adverse impact to existing natural

resources within the surrounding area, community or region.

Ing's proposal. Wurdeman, however, said Ing's request was "improper."

"The issue of due process was the first issue raised in the brief. At no time did TMT make any effort to intervene, to come before the court as an amicus, and briefs are due on Tuesday. This is a pretty untimely request on TMT's part," Wurdeman said.

Ing referenced the recent Kilakila O Halealaka decision as reason for the TMT Corp.'s involvement.

"Kilakila was only rendered a month ago and that's why we decided to come before this court," he said. "I didn't come here because we were asked to by the counsel. TMT alone made that decision. We seek to provide a different perspective than the parties currently. We think we can bring that perspective."

Nakamura granted Ing's request to file an amicus brief and ruled oral arguments be heard regarding the Kilakila case Feb. 13.

TMT spokesperson Sandra Dawson said she was happy with the court's decision.

"I'm happy that TMT is going to be a party, amicus curiae. We think we have a separate insight to bring to this case. I'm also happy that there will be oral arguments on the Kilakila O Halealaka decision," Dawson said.

Kealoha Pisciotta, president of Mauna Kea

resources within the surrounding area, community or region.

- 5- The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.
- 6- The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.
- 7- Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district.
- 8- The proposed land use will not be materially detrimental to the public health, safety and welfare.

Information found at www.state.hi.us/dlnr/swat/Land/Ch13-5.pdf.

Anaina Hou and one of the six petitioners in the case, said she thought it was a "safe decision."

"There's no harm in letting them speak to it, but they do have to stick with the scope of what's been said and done so far," she said.

Pisciotta's fellow appellants include nonprofit organization Kahea: The Hawaiian Environmental Alliance, Clarence Kukauakahi Ching, the Flores Case Ohana, Deborah J. Ward and Paul Neves.

Pisciotta and her fellow appellants opposed the project since the beginning on the basis Native Hawaiians believe the mountain to be sacred, as it is home to ancestral burial sites and a staple in Native Hawaiian culture.

The TMT project formed in 2003. Observatories and universities from Canada, Japan, China, India and the United States support the initiative. The telescope is projected to begin operations in 2022. Construction is still slated for April or May 2014.

The telescope would allow astronomers to watch for new-forming stars and planets, and will search for the very first stars and galaxies in the universe.

All parties will meet in court again Thursday, Feb. 13, for oral arguments.

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