

July 14, 2016

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Judge (Ret.) Riki May Amano
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RE: BLNR Case No. BLNR-CC-16-002 (Thirty Meter Telescope)
TMT International Observatory LLC's Response to
Petitioners' Request for a Continuance of the Motions
Deadline

Dear Judge:

The Petitioners' July 11, 2016 request for a continuance of the July 18, 2016 motions deadline and other related deadlines and their July 12, 2016 supplemental request to indefinitely suspend this contested case should be denied because it is another delay tactic in a long line of attempts by the Petitioners to unduly delay the contested case hearing. The Petitioners' requests are meritless and their continued delay efforts should not be condoned by this Hearings Officer.

Motions deadline:

The Petitioners argue in their July 11, 2016 request that the July 18, 2016 motions deadline should be continued for two weeks until August 1, 2016 because they purportedly have not received all the documents they requested from the Department of Land and Natural Resources ("DLNR") and/or the Board of Land and Natural Resources ("BLNR") under the Uniform Information Practices Act, Hawai'i Revised Statutes ("HRS") Chapter 92F. On July 12, 2016, the Petitioners sent a supplemental letter to this Hearings Officer requesting that this contested case be suspended indefinitely if the documents they requested under HRS Chapter 92F are not produced by the end of this week.

Preliminarily, the Petitioners apparently made their HRS Chapter 92F request on April 1, 2016, over 2½ months before the 2nd Pre-Hearing Conference on June 17, 2016. Despite having already made their HRS Chapter 92F request, the Petitioners did not raise this issue during the 2nd Pre-Hearing Conference as a basis for not

being able to meet the July 18, 2016 motions deadline.¹ Instead, the Petitioners delayed making their objection until July 11, 2016, almost a month after the 2nd Pre-Hearing Conference, and a mere week before the motions deadline. The untimeliness of Petitioners' objection to the motions deadline evidences that their July 11, 2016 request for a continuance of the motions deadline and their July 12, 2016 request to suspend this contested case indefinitely are nothing more than delay tactics.

The dilatory motivation of Petitioners' requests is further evidenced by their complete failure to seek judicial enforcement of their requests under HRS Chapter 92F. HRS § 92F-15(a) provides that "[a] person aggrieved by a denial of access² to a government record may bring an action against the agency at any time within two years after the agency denial to compel disclosure." Such "action" shall be brought in the circuit courts and shall, "[e]xcept as to cases the circuit court considers of great importance . . . take precedence over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way." See Haw. Rev. Stat. § 92F-15(b); Haw. Rev. Stat. § 92F-15(f). In the alternative, an aggrieved person "may appeal the denial [of access to a government record] to the office of information practices." Haw. Rev. Stat. § 92F-15.5(a).

Despite their ostensible complaints about "[a]lmost 3½ months" passing since they made their HRS Chapter 92F request, the Petitioners have not filed an action in the circuit court under HRS

¹ This Hearings Officer has already accommodated the Petitioners' request to extend the motions deadline once. Indeed, during the 2nd Pre-Hearing Conference, this Hearings Officer indicated her intention to set the motions deadline for two weeks after June 17, 2016. The Petitioners objected and instead asked for thirty days to file their motions. This Hearings Officer accommodated the Petitioners' objection and scheduled the motions deadline for July 18, 2016.

² The Hawai'i Supreme Court has construed the "denial of access" broadly to include "not only denials, but any agency response that has the 'net effect . . . significantly to impair the requester's ability to obtain the records or significantly to increase the amount of time he [or she] must wait to obtain them." State of Hawai'i Organization of Police Officers (SHOPO) v. Soc'y of Prof'l Journalists-University of Hawaii, 83 Hawai'i 378, 392, 927 P.2d 386, 400 (1996) (citation omitted).

§ 92F-15.5(a). They indicated to this tribunal that they have not appealed to the office of information practices. Indeed, even after this Hearings Officer notified all parties at the 2nd Pre-Hearing Conference of the motions deadline, the Petitioners apparently did not file an action in circuit court or appeal to the office of information practices to compel the production of the documents responsive to their HRS Chapter 92F request before the motions deadline. Petitioners have apparently and obviously sat on the legally prescribed remedies for their HRS Chapter 92F demands. There is also no evidence that Petitioners even sent an e-mail to BLNR/DLNR after the 2nd Pre-Hearing Conference asking them to produce the requested documents before the motions deadline. Instead, the Petitioners pocketed their HRS Chapter 92F request eager to use it, not as a vehicle to obtain relevant information, but rather to delay this contested case and speciously manufacture a claim that they are being denied due process.

Regarding the alleged denial of due process as a result of their HRS Chapter 92F request, Petitioners must raise such claims either in an action in circuit court or an appeal to the office of information practices. This Hearings Officer does not have jurisdiction to address the Petitioners' grievances' under HRS Chapter 92F. Regardless, the Petitioners are not being denied due process in this contested case because of any alleged denial of access to government records under HRS Chapter 92F. This is an administrative proceeding. Discovery is limited and only permitted in unusual circumstances if agreed to by the parties and/or approved by the Hearings Officer. None of the parties to this contested case have been permitted to conduct discovery on other parties or on BLNR/DLNR. Consequently, the Petitioners are not being deprived of an opportunity that is generally afforded to parties to a contested case hearing. They are not being deprived of an opportunity that has been granted or given to any of the other parties to this contested case hearing. Simply stated, the Petitioners are "in the same boat" as all other parties to this contested case hearing.

TIO and the rest of the parties to this contested case should also not be punished for any alleged mishandling of the Petitioners' HRS Chapter 92F request by the BLNR/DLNR or their deputy attorney generals. The Petitioners' claims of wrongdoing are against BLNR/DLNR and their deputy attorney generals, not TIO and the rest of the parties. TIO and the rest of the parties are not responsible for any alleged failure to produce documents under HRS Chapter 92F. This contested case should not be delayed or suspended because the Petitioners have encountered purported

problems obtaining documents in a separate proceeding -- a proceeding which TIO and the rest of the parties to this contested case are not a part of and which has its own enforcement provisions and remedies that the Petitioners have failed to exhaust.

Based on the foregoing, the Petitioners' request for a continuance of the motions deadline should be denied. Like all the other parties to the contested case, the Petitioners should be required to submit all their motions by July 18, 2016.

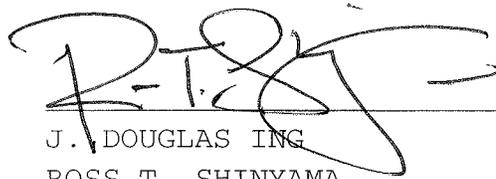
Deadline to submit witness lists:

The Petitioners also request staggered deadlines for the submission of witness lists. Specifically, the Petitioners request that they be permitted to submit their witness list on August 1, 2016, after the University of Hawai'i at Hilo and other "aligned" parties are required to submit their respective witness lists on July 18, 2016. This request was already rejected by this Hearings Officer at the 2nd Pre-Hearing Conference. There is also no basis or reason to have staggered deadlines in this contested case. Moreover, contrary to the Petitioners' claims, and as this Hearings Officer well knows from her time as a Circuit Court judge, witness lists for trial are filed at the same time. The plaintiff (or the party bearing the burden of proof) is not required to submit their trial witness lists before the defendant.

For the reasons expressed above, the Petitioners' request to delay submission of their witness list should also be dismissed.

Respectfully Submitted,

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RTS/cmm 516944.3

cc: Parties of Record (see attached Certificate of Service)

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

BLNR Contested Case HA-16-02
Document title:

CERTIFICATE OF SERVICE

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

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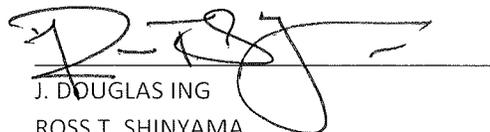
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