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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF)	CASE NO. BLNR-CC-16-002
)	
Contested Case Hearing Re Conservative	)	Motion to Reconsider All Motions,
District Use Application (CDUA) HA-3568 For	)	Application, and /or Request for
The Thirty Meter Telescope at the Mauna Kea	)	Admission or Intervention as a
Science Reserve, Ka'ohe Mauka, Hamakua,	)	Party or other parties in this
Hawaii TMK (3) 4-4-0015:009	)	matter.
	)	Hearing date: June 17, 2016
_____	)	Hearings officer Riki May Amano

Motion to Reconsider All Motions, Application, and /or Request for Admission or Intervention as a Party or other parties in this matter

While this Motion may appear a little odd, as I, Harry Fergerstrom, was also granted standing as a party in this case during this same hearing held June 17, 2016 notes that the process used at this time does not comply with the process outlined in Title 13 Chapter 5 of Hawaii Administrative Rules.

The Hawaii Supreme Court says (SCAP-14-00000873) on the last paragraph of page 5 and continuing on page 6 the following : The process followed by the Board here did not meet these standards. Quite simply, the board put the cart before the horse when it issued the permit before the request for a contested case hearing was resolved and the hearing was held. Accordingly, the permit cannot stand. We therefore vacate the judgment of the circuit court and the permit issued by the Board, and remand so that a contested case hearing can be conducted before the Board or a new hearings officer, or for other proceeding consistent with this opinion.

There are several statements made in this previous paragraph. (1) the permit cannot stand. (2) we, therefore VACATE the judgment of the circuit court, this being the third circuit court, judge Nakamura. (3) and the permit issued by the Board.

During the hearing conducted on June 17, 2016, on more than two occasions, I had raised issue to the conduct of the hearing not being in accordance to those procedures

outlined in title 13 chapter 5 Hawaii Administrative Rules. The acting hearing officer, Ms Amano cut me off several times when looking for clarity. The process that was purported was that those who, at this late date, filed Motions to intervene were to be heard at this hearing. This process being utilized was flawed as there is no point under title 13 chapter 5, where 4 years after the initial hearing (2011) intervention into a contested case is allowed. Similar attempts were made seeking simple logical understandings. For instance, if the permit is vacated, then there is no permit to contest. The procedure under title 13 chapter 5 clearly states that a person or persons wanting to contest the out come of a hearing on the permit must state so at the time of the hearing (same day), his or her intent to contest, and must be followed within 10 day with a letter to the same, seeking standing to contest.

Given the ruling by the Supreme Court on December 2, 2015, the proper process would be that the University of Hawaii (applicant) would have to resubmit their application for a (Conservation District Use) and a notice would be provided to the general public with a date and time the application would be heard by the Board of Land and Natural Resources. At such a hearing testimonies would be taken and those feeling that there was more to be said could apply for a contested case hearing. Those applicants for a contested case would then be given a date to gather and get vetted for their particular position that is so different than the general public, or that was not being handle by another group or person claiming similar that a contested case would be conducted.

Here in the instant, on June 17, 2016 a pre-hearing was conducted by hearing office, Former Circuit Court Judge Riki May Amano. The planned venue for this hearing was set to be at the County of Hawaii building, where there was adequate room to accompany all those who wanted to attend. INSTEAD...the meeting room was changed last min. to a small room in the old State Court house in a little room (x2) that could not hold all those whom has come to this public meeting. Even the existing contesters were all not let in to hear. However the Attorneys for other new comers were there in force and we able to get seating.

This hearing was supposed to hear motion to intervene. There are no provisions under title 13 chapter 5 for interventions to enter a contested case 4-5 years after the original case has started. THAT would apply even to myself who at the hearing was granted standing as a party.

Dated: July 18th, 2016

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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF)	CASE NO. BLNR-CC-16-002
)	
Contested Case Hearing Re Conservative	)	Motion to Stike All Motions,
District Use Application (CDUA) HA-3568 For	)	Applications,Decisions, etc.:
The Thirty Meter Telescope at the Mauna Kea	)	essentially making moot the
Science Reserve, Ka'ohe Mauka, Hamakua,	)	entire hearing.
Hawaii TMK (3) 4-4-0015:009)	
	)	Hearing date: June 17, 2016
_____	)	Hearings officer Riki May Amano

MOTION TO STRIKE ALL MOTIONS, APPLICATIONS,
DECISIONS, ETC.; ESSENTIALLY MAKING MOOT THE
ENTIRE HEARING OF JUNE 17TH, 2016.

This motion to strike comes after realizing just how wrong this prehearing was conducted, in spite of each of the main parties, Hearing Officer Riki May Amano, AG Julie China, and Michael Cain, Assistant director of Conservation lands have absolutely no excuse should they claim ignorance, of Hawaii Administrative Rules title 13 subsection 5 pertaining to contested case procedures.

Prior to setting up this hearing, there were many objections raised about Ms. Amano being selected as a hearing officer. In the Hawaii Tribune Herald, dated May 17, 2016. Front page states "Amano wants fresh slate" then follows with a contradiction in a little smaller letters that read "hearing officer, lawyers in TMT contested case discuss which materials she should have in her

file". My contention is that a clean slate should be clean, fresh, in Sifagaloa

This is of great public importance, because currently there are over 1000 pages of information already lodged that us new admitted contestants have not had an opportunity to review or comment on and has been accepted as established record.

There was no vetting of applicants at this June 17th meeting, something that confused me and I'm sure others. There were several times I tried to speak on this matter only to be told that I was not yet admitted as a party. Which also meant that as a non party like every one of the new applicants we are technically not able to comment on any of the perceived wrong doings that we experienced.

The Court knows that one cannot just pipe in and make comment, objection, etc. less you are a recognized party to the case.

Hawaii Supreme Court was quite clear as noted in Sifagaloa: The Supreme Court teaches us.....that justice can “perform it’s high function n the best way [only if it satisfies] the “appearance of justice.” For in a popular government, “justice must not only be done but must manifestly be seen to be done...”74 Haw.at 189-90, 840 p.2d at 3.

The Supreme Court went on to say; the process followed by the board here did not meet thee standards. Quite simply, the Board put the cart before the horse when it issued the permit before the contested case hearing was resolved and the hearing held.

ACCORDINGLY, THE PERMIT CANNOT STAND. We therefore vacate the judgment of the circuit court AND THE PERMIT ISSUED BY THE BOARD, and remen so that a contested case hearing can be conducted before the Board or a new hearings officer, OR FOR OTHER PROCEEDING CONSISTANT WITH THIS OPINON.

I contend that proceeding consistent with this opinion may include the reapplication for a CDUP.

This process current used not only did not vet new applicants it did not follow the rules concerning parties, how they become one and the timing deadlines. Unfortunately, this call out to abide by the rules would also include myself.

What was very obvious was that all three, including the hearings officer, the Attorney General, and the DLNR director of conservation lands were obligated by the very nature of their official capacities should have had complete knowledge of Title 13 Chapter 5 Hawaii Administrative Rules.

As a result of their action or inactions again this contested case is severely flawed from its onset and begs to once again be remanded back to BLNR, the current player release from this case and new ones assigned.

Several times over the past few months Governor David IGE announced the “The University of Hawaii is in the process of re-applying for the permit”. That I would agree with.

Dated this day July 17, 2016

Harry Fergerstrom

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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF)	CASE NO. BLNR-CC-16-002
)	
Contested Case Hearing Re Conservative	)	Motion to Remove Hearing
District Use Application (CDUA) HA-3568 For	)	officer Riki May Amano; Attorney
The Thirty Meter Telescope at the Mauna Kea	)	General Julie China; and Director
Science Reserve, Ka'ohe Mauka, Hamakua,	)	of coastal and conservation lands
Hawaii TMK (3) 4-4-0015:009	)	Michael Cain
	)	Hearing date: June 17, 2016
_____	)	Hearings officer Riki May Amano

MOTION TO REMOVE HEARING OFFICER RIKI MAY AMANO;
ATTORNEY GENERAL JULIE CHINA; AND DLNR DIRECTOR
OF COASTAL AND CONSERVATION LANDS MICHAEL CAIN

This motion comes after carefully observing while participating in
the pre-hearing held in Hilo June 17, 2016.

I don't think I ever seen such a blatant disregard for the directions
of the Supreme Court, nor hear so many incorrect interpretations
of the law or beared eye witness to the flawed implementation.

Even the new attorneys seemed to go along with this self-serving
tactic. Must have something to do with sliding in three cheer
leading applicants The TMT, TIO, and PUEO along with 6 new
attorneys for the pro TMT side.

I am a little confused.... If we are all on the same page as new
applicants that need first to be admitted as a party by the hearing

officers before we could make comment.....then how is it that in the certificate of service dated June 13, 2016 is the names of attorneys for TMT, TIO, and PUEO were included....while this determination as to whom are parties was not supposed to happen until the hearing on June 17, 2016.

I am not an attorney, but I do know when something wrong presents itself.

I do not know of any word that can describe what I have witnessed short of conspiracy....but if it look like it ..smells like it , most likely it is it. Without me saying it.

It would be hard pressed for any of us to expect true transparency and the look of honesty and Justice and fair play given what has already been demonstrated. I cannot, do not, nor can I be convinced that with the same players who demonstrated this

mockery that anything would change. Back to absolute ZERO is
the only answer.

Dated this Day July17,2016

Signed: Harry Fergertrom

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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF)	CASE NO. BLNR-CC-16-002
)	
Contested Case Hearing Re Conservative	)	Certificate of Service
District Use Application (CDUA) HA-3568 For)	
The Thirty Meter Telescope at the Mauna Kea)	
Science Reserve, Ka'ohe Mauka, Hamakua,)	
Hawaii TMK (3) 4-4-0015:009)	
	)	Hearing date: June 17, 2016
_____	)	Hearings officer Riki May Amano

I hereby certify that a true and accurate copy of all motions (3) motion to reconsider; motion to strike; motion to remove were sent to the following:

All copies were sent via electronic with the exception of Dwight Vincente 2608 Ainaloa Dr. Hilo, Hawaii 96720-3538 and a hard copy to Michael Cain Office of conservation amd coastal lands 1151 Punchbowl st rm 131 Honolulu Hawaii 96813

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