

BOARD OF LAND AND NATURAL RESOURCES

2016 JUL 12 A 10:02

STATE OF HAWAI'I

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'ohē Mauka, Hamakua, Hawai'i)
TMK (3) 4-4-015:009)
_____)

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII
Case No. BLNR-CC-16-002

Minute Order No. 12 (Order
Denying Temple of Lono's
Motion for Refund of Filing
Fee, Filed June 23, 2016)

**Minute Order No. 12 (Order Denying Temple of Lono's
Motion for Refund of Filing Fee, Filed June 23, 2016)**

The Temple of Lono ("Lono") filed a Motion for Refund of Filing Fee on June 23, 2016. Lono paid the \$100 filing fee to be a party to the contested case hearing and now seeks a refund.

Lono claims that the fee assessed by the Board of Land and Natural Resources ("Board") under Hawai'i Administrative Rule ("HAR") § 13-5-32 through § 13-5-34 to file an application for a departmental or board permit does not apply to it. We agree. A fee ranging from \$250 to \$2,500 is paid by an applicant for a departmental or board permit to cover processing costs. Hawai'i Revised Statutes ("HRS") § 183C-3(4); HAR § 13-5-33 and § 13-5-34. The University of Hawai'i at Hilo ("University") paid a permit application fee when it submitted its Conservation District Use Application for the Thirty Meter Telescope Project (hereinafter "TMT CDUA") in 2010.

A permit application fee is not the same as a filing fee for a contested case hearing. HAR § 13-1-30 requires a filing fee for a contested case hearing to be paid as follows:

When an application involves a conservation district use permit (including a request for a permit, modification of a permit,

violation of a permit, or revocation of a permit), the request for a contested case hearing shall be accompanied with a \$100.00 nonrefundable filing fee or a request for waiver of this fee. The chairperson may waive the filing fee for any person upon a showing of financial hardship.

Lono claims that HRS § 183C-3, the authorizing statute for the administrative rule, does not allow the Board to charge a fee in this instance. HRS § 183C-3(4) allows the Board to collect a reasonable fee sufficient to defray the cost of processing an application for the use of conservation lands. The processing of the University's TMT CDUA requires a contested case hearing. Under these circumstances, the Board is authorized to collect a filing fee.


The Hawai'i Supreme Court ordered "that a contested case hearing [] be conducted before the Board or a new hearing officer, or for other proceedings consistent with this opinion." *Mauna Kea Anaina Hou v. Board of Land and Natural Resources*, 136 Hawai'i 376, 363 P.2d 224 (2015). On remand, those who were not a party to the first contested case hearing are being allowed to participate in the second contested case hearing. *See* Minute Order No. 7. Lono, who was not one of the original applicants, seeks to be a party to the second contested case hearing.

Lono claims that an applicant requesting a contested case hearing under HAR § 13-1-29 must pay a filing fee under HAR § 13-1-30, but that the administrative rule does not apply to an applicant requesting to be a party to a contested case under HAR § 13-1-31. HAR § 13-1-29 applies to the applicants who requested a contested case hearing when the TMT CDUA first came before the Board in 2011. HAR § 13-1-31 applies to those original applicants as well as to the new applicants on remand.

The only administrative rule that will allow Lono to be a party to the second contested case hearing is HAR § 13-1-31. If Lono is made a party, the contested case hearing will determine its “legal rights, duties, or privileges.” HRS § 91-1(5). All applicants seeking a contested case hearing involving a conservation district use permit are required to pay a filing fee. HAR § 13-1-30. This requirement is reasonable and not unduly burdensome given the fact that all applicants, including Lono, can seek a waiver of the filing fee upon a showing of financial hardship. *Id.* All applicants have also been offered the opportunity by the Hearing Officer to participate in the second contested case hearing either as a party or as a witness. *See* Tr. June 17, 2016. No filing fee would be required to participate as a witness. Lono has chosen to be a party. As a party, Lono must pay the \$100 filing fee.

Lono’s motion for a refund of the filing fee is **HEREBY DENIED**.

Dated: Honolulu, Hawai‘i, July 12, 2016.



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

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

BLNR Contested Case HA-16-02
Minute Order 12, Order denying Temple of
Lono's motion for refund of filing fee, filed June
23, 2016

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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Dated: Honolulu, Hawai'i, July 12, 2016



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