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BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation;	) MOTION TO DISMISS
Use Application (CDUA) HA-3568 For the	) CONTESTED CASE HEARING
Thirty Meter Telescope at the Mauna Kea	) RE CONSERVATION USE
Science Reserve, Ka'ohe Mauka, Hamakua,	) APPLICATION HA-3568;
Hawai'i TMK(3)4-4-015:009	) MEMORANDUM IN
	) SUPPORT;
	) CERTIFICATE OF SERVICE

MOTION TO DISMISS CONTESTED CASE HEARING RE
CONSERVATION USE APPLICATION HA-3568

I Cindy Freitas, "Petitioner" moves the Hearing Officer to Dismiss Contested Case Hearing Re Conservation Use Application HA-3538 pursuant to Hawaii Administration Rule 13-1-34.

Memorandum in Support for this motion.

Kailua Kona HI., October 18, 2016


Cindy Freitas Petitioner

Received
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
2016 Oct 18 11:40 am

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BOARD OF LAND AND NATURAL RESOURCES
FOR THE STATE OF HAWAII

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation;	) MEMORANDUM IN
Use Application (CDUA) HA-3568 For the	) SUPPORT FOR MOTION TO
Thirty Meter Telescope at the Mauna Kea	) DISMISS CONTESTED CASE
Science Reserve, Ka'ohe Mauka, Hamakua,	) HEARING RE CONSERVATION
Hawai'i TMK(3)4-4-015:009	) USE APPLICATION HA-3538;
	) CERTIFICATE OF SERVICE
_____)

MEMORANDUM IN SUPPORT FOR MOTION TO DISMISS
CONTESTED CASE HEARING RE CONSERVATION USE APPLICATION
HA-3538

I. INTRODUCTION

On October 17, 2016 the pre-hearing conference was schedule at the Hilo Naniloa Hotel at 93 Bayan Drive, Hilo, Hawai'i from 10:00a.m. til 1:00p.m.

II. AUGUMENT

I Cindy Freitas, "Petitioner" and other parties attend this pre-hearing conference with many unresolved motions and reconsideration motions to move forward. But yet the evidentiary hearings are set to begin on October 20, 2016.

On October 14, 2016 at 3:30 p.m. Minute Order 36 [DOC 376] was posted in the Document Library (Exhibit 1) **ORDER VOIDING PERMIT** states:

Board now declares and affirms that conservation district use permit HA-3568 is void.

With this Minute Order DOC 376 voided, therefore this contested case “Lack Jurisdiction of Subject Matter” to set a claim. There is no claim in this Caption above (“IN THE MATTER OF”). See Mauna Kea Anaina Hou v. Board of Land and Natural Resources, 136 Hawai’i 376, 363 P. 3d 224 (2015) in which it vacated the Third Circuit Court’s May 5, 2014 Decision and Order and Final Judgment thereon and remanded to circuit court to further remand to the Board of Land and Natural Resources (“BLNR”) for proceedings consistent with the Supreme Court’s opinion. The application needs to be refilled with the proper Applicant and proper signatures and the process started all over again, as required under the rules and the law, with the University of Hawaii (“UH”) as the applicant and David Lassner’s signature. (Exhibit 2)

With the evidentiary hearing set to begin all document that was submitted into the Document Library for this evidentiary hearing are based on the merits of the Conservation District Use Application (“CDUP”). As far as the sublease goes it should be void. Transcript (“Tr.”) of Proceedings “Request for Admission and Motions” on June 17, 2016 before: Jean Marie McManus, CSR #156, stated by Mr. ING: “I definitely anticipate presenting witnesses and presenting evidence that go to the merits of the Conservation District Use Application”. (Tr. of June 17, 2016 hearing at page 24: paragraph 9-12). (Exhibit 3)

Hawaii Administrative Rules (“HAR”) 13-5-31, Permit Applications, provides, in pertinent part, as follows:

- (a) Applications for all permits and approvals provided for in this chapter shall be submitted to the department on the form prescribed by the department. The application shall contain:

- (1) A draft or final environmental assessment, draft or final environmental Impact statement, or proof of an exemption or request for an exemption

From the chapter 343, HRS, process, as applicable;

- (2) Associated plans such as location map, site plan, floor plan, Elevations, and landscaping plans drawn to scale;
- (3) The proposed land use shall address their relationship with county General plans and development plans;
- (4) Any other information as determined by the department;
- (5) **Signature of the landowner;**

- (b) For state and public lands, the State of Hawaii or government entity with Management control over the parcel shall sign as landowner...

HAR 13-5-34, Board Permits, provides, in pertinent part, as follows:

- (a) Applications for Board permits shall be submitted to the department in Accordance with section 13-5-31.
- (b) A public hearing, if applicable, shall be held in accordance with section **13-5-40**
- ...
- (d) Contested Case hearing, if applicable, and as required by law, shall be held As provided in chapter 13-1. The aggrieved appellant or person who has Demonstrated standing to contest the board action may request a contested Case hearing pursuant to chapter 13-1.

III. CONCLUSION

Petitioner respectfully request that this Hearing Officer dismiss this case with good cause.

Kailua Kona HI. October 18, 2016


Cindy Freitas Petitioner

EXHIBIT 1

MINUTE ORDER NO. 36
DOC 376

BOARD OF LAND AND NATURAL RESOURCES

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

STATE OF HAWAII

2016 OCT 14 P 3:30

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)
)
)
)

Case No. BLNR-CC-16-002

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII
**MINUTE ORDER NO. 36
(ORDER VOIDING
PERMIT); CERTIFICATE
OF SERVICE**

MINUTE ORDER NO. 36 (ORDER VOIDING PERMIT)

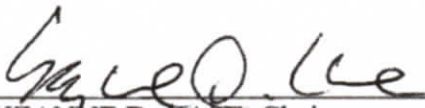
The Hawai'i Supreme Court recently issued its decision in *Kilakila 'O Haleakala v. Bd. of Land & Nat. Res.*, SCWC-13-0003065, 2016 WL 584921 (Haw. October 6, 2016). *Kilakila* concerned a conservation district use permit for construction of the Advanced Technology Solar Telescope on the island of Maui, at the summit of Haleakala. *Kilakila* makes it clear that voiding the permit that was approved by the Board of Land and Natural Resources (Board) prior to holding a contested case hearing is an important factor in meeting procedural due process requirements.

Following the Hawai'i Supreme Court's decision in *Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res.*, 136 Hawai'i 376, 399, 363 P.3d 224, 247 (2015), the Board initiated a new contested case hearing with the understanding that conservation district use permit HA-3568, approved by the Board in February 2011, before the contested case hearing, and in April 2013, after the contested case hearing, was voided by the Supreme Court in its decision. No party has ever claimed that the permit is not void. However, in an over abundance of caution and to make sure the record is clear, the Board now declares and affirms that conservation district use permit HA-3568 is void.

EXHIBIT 1

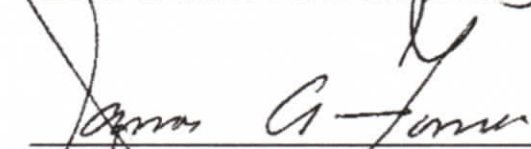
This order may be executed in counterparts.

DATED: Honolulu, Hawai'i, October __, 2016.


SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

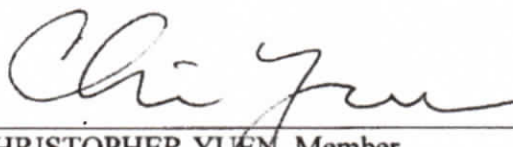

STANLEY H. ROEHRIG, Member


KEITH "KEONE" DOWNING, Member


JAMES A. GOMES, Member


THOMAS OI, Member


SAMUEL "OLU" GON III, Member


CHRISTOPHER YUEN, Member

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 Order 36

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Minute Order 36 was served upon the following parties by the means indicated on October 14, 2016:

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Witness for the Hearing Officer

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Witness for the Hearing Officer

Patricia P. Ikeda
peheakeanila@gmail.com
Witness for the Hearing Officer


Signature: 
Name: Michael Cain
Date: October 14, 2016

EXHIBIT 2

CONSERVATION DISTRICT USE PERMIT APPLICATION

CONSERVATION DISTRICT USE PERMIT APPLICATION

Thirty Meter Telescope Project

Island of Hawai'i

**Applicant:
University of Hawai'i at Hilo**

EXHIBIT 2

Conservation District Use Application (CDUA)

For DLNR Use	
File #	_____
Reviewed by	_____
Date	_____
Accepted by	_____
Date	_____
180-Day Exp. EA/EIS Required	_____
PH Required	_____
Decision	_____
Date	_____

Project Location/Address: Mauna Kea Loop Road

District/County: Hāmākua District Island: Hawai'i

Subzone: Resource Tax Map Key(s): 4-4-15:9 - Mauna Kea Science Reserve

Subzone: _____ Tax Map Key(s): _____

Total Area of Parcel in sq. ft. or acres: 11,288 acres Area of Proposed Use in sq. ft. or acres: 8.7 acres

Indicate which of the following approvals are being sought, as specified in the Hawaii Administrative Rules (HAR), Chapter 13-5.

☒ Board Permit
☐ Departmental Permit
☐ Emergency Permit
☐ Temporary Permit
☐ Site Plan Approval

APPLICANT

Legal Name: University of Hawai'i c/o of University of Hawaii at Hilo

Street Address: 200 West Kawili Street

City, State and Zip+4 Code: Hilo, HI 96720

Contact Person & Title: Dr. Donald Straney, Chancellor

Phone No.: 808-974-7444 Fax No.: 808-933-3304

Email: dstraney@hawaii.edu
Interest in Property: General Lease No. S-4191 covering TMK 4-4-15:9
*Signature: Donald L. Straney Date: SEP 22 2010
*If for a Corporation, Partnership, Agency or Organization, must be signed by an authorized officer.

**PROPERTY
OWNER(S)**

(if other than the applicant)

Name: State of Hawai'i
Street Address: 1151 Punchbowl Street, Room 130
City, State and Zip+4 Code: Honolulu, HI 96813
Contact Person & Title: Laura Thielen, Chairperson, Board of Land and Natural Resources
Phone No.: (808) 587-0400 Fax No.: (808) 587-0390
Email: _____

*Signature: _____ Date: _____
*For private lands with multiple landowners, landowners whose property interests constitute or exceed 85% of the fee ownership of the subject parcel(s) shall sign the application.

AGENT

Name: None
Street Address: _____
City, State and Zip+4 Code: _____
Contact Person & Title: _____
Phone No.: _____ Fax No.: _____
Email: _____
Signature: _____ Date: _____

Emergency Contact Information

Contact Person and Title: _____ Phone No.: _____

EXHIBIT 3

REQUEST FOR ADMISSION
AND MOTION

TRANSCRIPT FOR
JUNE 17, 2016

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF) CASE NO. BLNR-CC-002
)
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)
-----)

REQUEST FOR ADMISSION AND MOTIONS

Held on June 17, 2016, commencing at 10:00 a.m. at
the Hilo State Office, Conference Rooms A, B and C,
75 Aupuni Street, Hilo, Hawaii 96720.

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JUDGE RIKI MAY AMANO, Hearing Officer

3 JULIE CHINA, Deputy Attorney General
4 WILLIAM WYNHOFF, Deputy Attorney General

5 STEPHEN MICHAEL CAIN, Staff Planner

6 TIM LUI-KWON, ESQ.

7 JOHN P. MANAUT, ESQ.

8 IAN L. SANDISON, ESQ.

9 Attorneys for University of Hawaii

10 RICHARD N. WURDEMAN, ESQ.

11 Attorney for Mauna Kea Anaina Hou, et al
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1 the EIS that was done in 2008/2009 that a larger
2 entity would be formed and it would likely include
3 governments of Japan, China, India and Canada.
4 That's been disclosed from day one.

5 HEARING OFFICER AMANO: So do you
6 anticipate that with this new hearing there would be
7 additional information that you would be adding to
8 the hearing?

9 MR. ING: I definitely anticipate
10 presenting witnesses and presenting evidence that go
11 to the merits of the Conservation District Use
12 Application.

13 HEARING OFFICER AMANO: I guess what I'm
14 asking is, how is your participation different from
15 UH Hilo's?

16 MR. ING: Well, while UH Hilo is the
17 Applicant, they control the process. They have a
18 seat at table. TIO does not. But we have most at
19 stake in the outcome of this proceeding.

20 HEARING OFFICER AMANO: But you didn't have
21 a seat at table at the first hearing.

22 MR. ING: We did not, but that's largely
23 because the custom and practice of the department at
24 that time was to have the University prepare and file
25 the application, because they hold the master lease

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,
Hāmakua, 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 on October 10, 2016:

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Tel. (808) 284-5675
email: cdexk@hotmail.com
Co-Counsel for Petitioner
KAHEA: The Hawaiian Environmental Alliance,
a domestic non-profit Corporation

Signature: 

Name: *Cindy Freitas*

Date: *10/18/16*

TDC