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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
) Motion to Reconsider(DOC 553,
A Contested Case Hearing Re) minute order 44); Motion to
Conservation District Use Permit) include WDT and pre-hearing
(CDUP) HA-3568 for the Thirty) statement into evidence; Motion
Meter Telescope at the Mauna) to include as a Submission of
Science Reserve, Kaohe, Mauka,) Record, the Testimony of
Hamakua District, Island of Hawaii) Williamson Chang: memorandum
) of support; good cause showing;
) COS
) HO: Riki May Amano

MOTION TO RECONSIDER(DOC 553/MINUTE ORDER 44

Now comes Harry Fergerstrom with this motion to reconsider. Minute Order 44 shows that only the exhibits (1,3,4,5,6) that were on file in the evidentiary submittals are now received into evidence.

MOTION TO INCLUDE THE WDT AND THE PRE-HEARING STATEMENT INTO EVIDENCE

The prehearing Statement and the Written Direct Testimony of Harry Fergerstrom was also a part of the evidentiary submittals that were motioned into evidence via Document 494, filed on March 6, 2017.

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Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
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Minute Order 44 reflects that only the those items labeled exhibits in evidentiary submissions under the category of “d” were received into evidence.

Mr. Fergerstrom contends that because of the way things are labeled in the evidentiary submittals, that not all of the documents had a label of exhibits. Of particular importance is the pre-hearing statement and the Written Direct. It is the contention that both the pre-hearing Statement and the WDT are integral to record of this case and should be included in the received evidence

MEMORANDUM OF SUPPORT

Minute Order 44 sets out to describe which items were moved into evidence. Mr. Fergerstrom via document 494(motion to move into evidence), filed on March 6, 2017.

After reading the objections of the University of Hawaii stating that the filing of all of category “D” did not give specific details on what exhibits were being referenced in Doc 494, and therefore should be rejected.

To remedy this problem, via Doc 515, set out to give an explanation as to clarify just what was in category “d”. Document 515 was a document of clarification, not a late filing.

Having had no response to document 515 (filed March 18, 2017) from any of the parties, nor the Hearing Officer, Mr. Fergerstrom apparently falsely believed that document 515 was excepted as a

clarification (not a late filing) of Document 494, that would aid the parties and the Hearing Officer.

It was not until Minute Order 44 (dated April 19th, 2017) was release to all of the parties that it became apparent that only the labeled exhibits 1,3,4,5,6 in category “d” were received into evidence. That no attention was given to Document 515 (Clarifaction)

Minute Order 43 gives a time line for reconsideration.

MOTION TO INCLUDE AS A SUBMISSION OF RECORD THE WRITTEN DIRECT TESTIMONY OF WILLIAMSON CHANG as an exhibit.

Minute Order 44 states that item “d-2” which is the direct written testimony of Williamson Chang. Under the category of Rulings it states that “ not offered, not received” “D-2 was not offer into evidence by Mr. Fergerstrom. To wit Doc 494 says “now comes Harry Fergerstrom with a motion to move all documents in evidentiary hearing submittals identified by letter “d” into evidence, with the exception of the Written Direct Testimony of Wiliamson Chang”

It is important that the record correctly relects that on January 23, 2017 Mr. Fergerstrom presented Mr. Chang at this contested case hearing to testify and subject to cross examination.

This is offer of proof: transcript vol 28 page 156 line 24, 25 thru page 157 up to line 8

Fergerstrom:

“Mr. Chang will be able to present information that is very necessary for this body to understand title, land on Mauna Kea and even—he can go so far as the metes and bounds of the so called State of Hawaii.

He’s a professor of law at the University of Hawaii Law School where he has been practicing for 34 years. And he’s even written books in this matter. And so I think it’s very important that this relativity be presented”.

@ line 18 Amano: ***“Well, I’m allowing your offer of proof based on what you just said”***

The exact word regarding how the written Direct of Mr. Chang was to be treated is at page 167 line 24 and 25 continues to Page 168 to line 5. (Volume 28)

Those line read:

“I’m allowing you to submit the written direct testimony as an exhibit in support of your offer of proof. So I’m not going to consider it as evidence in the case, but because I would like you to have a record of what Professor Chang would be testifying about, I’m going to allow you to bring it in as an exhibit.”

PROPOSED SOLUTION:

Amended Motion to include the pre-hearing Statement and the Written Direct Testimony of Harry Fergerstrom now moved into evidence. Exhibit D-2 (WDT of Williamson Chang) received but not to be weighed as evidence.

Dated this day April 26, 2017

Harry Fergerstrom