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BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation)
District Use Application (CDUA) (HA-) **TEMPLE OF LONO RESPONSE TO**
3568) The Thirty Meter Telescope at the) **MAUNA KEA ANAINA HOU ET AL.**
Mauna Kea Science Reserve, Kaohe Mauka,) **JOINDER AND OBJECTIONS**
Hamakua District, Island of Hawai'i,)
TMK (3) 4-4-015:009)
_____)

TEMPLE OF LONO RESPONSE TO MAUNA KEA ANAINA HOU ET AL.
JOINDER AND OBJECTIONS

On April 27, 2017, Mauna Kea Anaina Hou (MKAH) et al. filed a pleading titled "Mauna Kea Anaina Hou et al. Joinder and Objections." ("MKAH")

This pleading included the following:

Therefore, MKAH et al., acting with an abundance of caution since because [sic] we were not afforded an opportunity to respond to objections, file the following responses and provide arguments to support reconsideration regarding our exhibits that have been excluded by the HO

MKAH at 3.

The MKAH pleading identifies a number of documents excluded by the Hearing Officer that are part of the record in the first contested case in this proceeding.

Received
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
2017 May 2 11:04 am

MKAH exhibits denied admission when already in evidence from prior related proceeding
B.01d HA-11- 05 Petitionerss' Opening Brief TMT CCH (2011)
B.01e HA-11- 05 Petitionerss' Findings of Fact and Conclusions of Law, Proposed Decision and Order, TMT Contested Case Hearing (2011).
B.01f Petitioners Combined Exceptions to Hearing Officerf??s proposed Findings of Fact, Conclusions of Law, and Proposed Decision and Order (2011)
B.01g Petitionerss' Combined Response to Applicantf's Exceptions to Hearing Officerf's proposed Findings of Fact, Conclusions of Law, and proposed Decision and Order.
B.01h Kealoha Pisciottaf's written direct testimony for and cross examination (September 26, 2011)
B.01i Kealoha Pisciotta,f's Closing Statement presented September 30, 2011
B.01m Testimony of Kealoha Pisciotta and Kinohi Neves, Feb. 2, 2013 oral arguments
B.01r Act 132, SLH 2009
B.01u ICA Mauna Kea Anaina Hou v BLNR

MKAH also sought to admit Exhibits B.30 through B.43,¹ all of which are documents in the record of the prior proceeding.

There is no need for MKAH to argue for the admission of these documents into evidence.

HAR §13-1-32.4 Records on file with board.

Records directly relating to the application that are on file with the board, including, but not limited to, the record of the public hearing (if held), shall be a part of the record of the contested case; provided, however, that any

¹ The pleading says “B.30 thru B.23.” From a review of the documents in the Documents Library, it is clear that MKAH meant B.30 to “B.43.”

party may object, in the manner provided in section 13-1-35, to any part of such record.

Obviously documents accepted into evidence in the first contested case are directly related to the application in the second contested case because the same application – CDUA (HA 3586) – is the basis for both contested cases.

The problem arose when the Hearing Officer, early in the second proceeding, erroneously said that she would not be looking at the record from the first contested case, as if that record was irrelevant or somehow excluded from the record of the second contested case. The Hearing Officer's position directly contradicted HAR §13-1-32.4.

That position also misled the parties into thinking that, if they wanted to use documents in the record from the first proceeding, those documents would have to be moved into evidence.

Following that misdirection from the Hearing Officer, such exhibits already in the record were included in motions to admit exhibits into evidence, such as DOCs-482, 509.

Those unnecessary filings then created the opportunity for filing objections to the admission into evidence of those documents. That is an opportunity unsupported by the administrative rule.

While HAR §13-1-32.4 states that objections to the existing record can be made, the only way that provision can be read to make sense is that the parties could go into the record of the first contested case and file objections when the second contested case began. The objections would be determined by the party's examination of the prior record and the objections would be based on that review,

not in response to another party's later unnecessary motion to admit exhibits already in the record from the first case.

No party in this contested case made any objections to the record that existed at the time this case began.

Objections to unnecessary motions filed by a party misled by the Hearing Officer's position into seeking to admit a document already in the record pursuant to HAR §13-1-32.4 are untimely and not provided for in the rules.

The Hearing Officer cannot remove those records from the agency records, so there is no basis for the Hearing Officer to deny the evidentiary nature of those documents in this contested case.

In the absence of any objections to the record from the first contested case prior to the initiation of the second contested case and in light of HAR §13-1-32.4, all documents in the record of the first proceeding are available to the parties in this proceeding for the purpose of preparing findings of fact and conclusions of law.

DATED: May 2, 2017

_____/s/_____
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BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation)
District Use Permit (CDUP) HA-3568 for) **CERTIFICATE OF SERVICE**
The Thirty Meter Telescope at the Mauna)
Kea Science Reserve, Kaohe Mauka,)
Hamakua District, Island of Hawai'i,)
TMK (3) 4-4-015:009)
_____)

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the **TEMPLE OF LONO RESPONSE TO MAUNA KEA ANAINA HOU ET AL. JOINDER AND OBJECTIONS** was served on the following parties by email on May 2, 2017:

Michael Cain <michael.cain@hawaii.gov>, Office of Conservation & Coastal Lands <dlnr.maunakea@hawaii.gov>, Kealoha Pisciotta-Keomailani Von Gogh <keomaivg@gmail.com>, Clarence Ching <kahiwaL@cs.com>, Uncle Kalani Flores <ekflores@hawaiiintel.net>, Pua Case <puacase@hawaiiintel.net>, cordylinicolor@gmail.com, kealiikea@yahoo.com, Bianca Isaki <bianca@kahea.org>, Ian Sandison <isandison@carlsmith.com>, tluikwan@carlsmith.com, John P. (Pete) Manaut <jpm@carlsmith.com>, Lindsay N. McAneeley <lmcaneeley@carlsmith.com>, T. Shinyama' <RShinyama@wik.com>, douging@wik.com <douging@wik.com>, mehana kihoi <uhiwai@live.com>, Kahookahi Kanuha <kahookahi@gmail.com>, Joseph Camara <kualiic@hotmail.com>, lsa@torkildson.com <lsa@torkildson.com>, njc@torkildson.com <njc@torkildson.com>, leina'ala s <leinaala.mauna@gmail.com>, Maelani Lee <maelanilee@yahoo.com>, Lanny Sinkin <lanny.sinkin@gmail.com>, akulele@yahoo.com <akulele@yahoo.com>, s.tabbada@hawaiiintel.net <s.tabbada@hawaiiintel.net>, tiffniekakalia <tiffniekakalia@gmail.com>, Glen Kila <makakila@gmail.com>, Brannon Kealoha <brannonk@hawaii.edu>, hanahanai@hawaii.rr.com <hanahanai@hawaii.rr.com>, pohaku7@yahoo.com <pohaku7@yahoo.com>, Ivy McIntosh <3popoki@gmail.com>, Kealamakia Jr. <mkealama@yahoo.com>, Patricia Ikeda

<peheakeanila@gmail.com>, Yuklin Aluli <yuklin@kailualaw.com>, Dexter Kaiama
<cdexk@hotmail.com>

and by first class mail on MAY 2, 2017 to:

1. Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

2. Harry Fergerstrom
P.O. Box 951
Kurtistown, HI 96760

3. Michael Cain, Custodian of Records
Conservation and Coastal Lands
1151 Punchbowl, Room 131
Honolulu, Hawai'i 96813

Dated: May 2, 2017

_____/s/_____
Lanny Alan Sinkin