

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF	)	CASE NO. BLNR-CC-16-002
	)	
Contested Case Hearing Re Conservation District	)	Minute Order No. <u>62</u>
Use Application (CDUA) HA-3568 For the	)	(Order Denying Cindy Freitas’
Thirty Meter Telescope at the Mauna Kea Science	)	Motion to Dismiss Contested Case
Reserve, Ka`ohe Mauka, Hamakua, Hawai`i	)	Hearing Re: Conservation Use
TMK (3) 4-4-015:009	)	Application HA-3568 (Doc. 391))
	)	(Non-Hearing Motion)
	)	
_____	)	<b>Certificate of Service</b>

**MINUTE ORDER NO.**

**(Order Denying Cindy Freitas’ Motion to Dismiss Contested Case Hearing Re: Conservation Use Application HA-3568 (Doc. 391))**

Cindy Freitas filed her Motion to Dismiss Contested Case Hearing Re: Conservation Use Application HA-3568; Memorandum in Support (Doc. 391) on October 18, 2016 (“Motion”).

Other than the Motion, there were no other submissions for the Hearing Officer’s consideration.

In this Motion, Cindy Freitas seeks to dismiss the entire CDUA contested case hearing based on Minute Order 36 (Order Voiding Permit) (Doc. 376). Ms. Freitas believes that by voiding the permit: “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)” Doc. 391 at page 2.

Minute Order 36 voids the permit that was issued in this case for a specific reason articulated therein:

Received  
Office of Conservation and Coastal Lands  
Department of Land and Natural Resources  
State of Hawaii  
2017 June 4 8:10 am

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 [sic] 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. (emphasis added)**

Minute Order 36 at page 1.

The Hawai'i Supreme Court remanded this matter for the purpose of having a new contested case hearing. The contested case hearing arises from the application for the permit. Voiding the permit issued prior to the remand does not operate to negate the underlying application.

Based upon the Motion and all applicable law, the entire record having been considered by the Hearing Officer,

IT IS HEREBY ORDERED that the Motion is DENIED.

**Motion to Reconsider.** A party, who believes it appropriate, may file a motion to reconsider using the procedure set out herein. Any Motion for Reconsideration shall not be used to reargue the motion or set out positions of a purely repetitious nature or to present factual or legal grounds that could or should have been presented at the original hearing. AMFAC, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114 (1992).

The deadline for submission of any **motion** to reconsider this minute order is no later than **5 business days** after the date this Minute Order is filed in the Documents Library. Any **responses to motions to reconsider**, shall be submitted no later than **10 business days** after the

order is filed in the Documents Library; essentially 5 business days after the deadline for motions to reconsider.

Any Motion to Reconsider shall be considered a non-hearing motion unless otherwise designated by the Hearing Officer.

DATED: Honolulu, Hawai`i, June 5, 2017.



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Judge Riki May Amano (Ret.)  
Hearing Officer

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

BLNR Contested Case HA-16-02  
Document title: **Minute Orders 60-67**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by email (when indicated) on June 5, 2017 and by regular mail on June 5, 2017:

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June 5, 2017