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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF) Case No. BLNR-CC-16-002
) Responses to
) FINDING OF FACT,
A Contested Case Hearing Re) CONCLUSIONS OF LAW,
Conservation District Use Permit) RECOMMENDATION; TABLE
(CDUP) HA-3568 for the Thirty) OF CONTENTS; COS
Meter Telescope at the Mauna)
Science Reserve, Kaohe, Mauka,)
Hamakua District, Island of Hawaii)
) Hearings Officer: Riki M. Amano

RESPONSES TO FINDING OF FACT AND CONCLUSIONS OF LAW

I hereby incorporate by reference the Finding of Fact and Conclusions of Law of the parties opposing the Thirty Meter Telescope Permitting. Given the information available and the obvious administrative bias that that dominated this remand for a contested case or other proceeding consistent with this decision.

EVEN after getting the decision that the CDUP HA-3568 was VACATED and REMANDED for a contested case or other proceeding consistent with this courts decision:

Received
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
2017 June 12 6:38 pm

BLNR after careful review, decided on their own, to flip their noses at the Supreme Court and decided to simply return to “**continuing the contested case**” paying no mind to the fact that the Court just VACATED the permit. Along with this vacation, the supporting documents necessary to get the CDUA and the opinion of the Office of Conservation and Coastal Lands also VACATED.

This did not happen as is illustrated by the current caption of the action itself “A contested case hearing for the CDUP HA-3568”.

Either the permit was vacated or not.

As a result the BLNR determined that they would just act like this a continuance of the existing contested case thereby avoiding the reapplication and the public hearing requirements.

The appointment of a hearings officer was again the cart before the horse. A hearing officer is appointed after a contested case is determined during the public hearing that never happened.

With the appointment of the hearings officer, the BLNR gave her unquestionable decision-making power over all matters related to the contested case. Even questions of procedure and questionable decision making such as how to handle MOTIONS (all motions non hearing motions) not even subject to BLNR’s oversight, until after this case is decided. This factor is clearly demonstrated by the way this contested case was handled by this hearing office where SHE

had sole authority over whom will participate, dictating how she will handle any and all motions without hearing, deciding WHEN she chooses to respond to any motion no matter how critical to the hearing process.

The requirements of DUE PROCES is dependent on certain fundamentals and procedures....Due process affords interested parties an opportunity to PRESENT their objections in a **fair** trial or tribunal. This was not the case here. On January 23, 2017 Mr . Fergerstrom presented his witness Professor Williamson Chang. Mr chang is a professor of law at the Richardson school of law. He was there to offer testimony on the legality of the State of Hawaii, the proof that that te State of Hawaii does not OWN nor has TITLE to the summit region of Mauna Kea. Mr. Chang was blocked from testifying where the hearing officer claimed that his testimony was irrelevant, immaterial. How could this possibly be. As claimed by Mr. Fergerstrom that the summit of Mauna Kea is crown and government lands held in trust by the State of Hawaii. Mr Fergerstrom claimed that the State has no proof of a conversion of land title from the Hawaiian Kingdom to the State of Hawaii. All of this could have been established by allowing Mr. Fergerstrom's witness Professor Williamson Chang to present his testimony in public with cross examination. But NO.....Mr. Fergerstrom was denied the right to present his witness, thus violating his right to due process.

Simple civil procedure were overlooked and even denied. Such as certified mailing with a return receipt to establish offers of proof.

Certificates of service with the required language” Under the penalties of perjury” I certify the following was not a recognized norm.

Justice must not only be done but must manifestly be seen to be done. Not only is a BIASED decision-maker constitutionally unacceptable, but our system of law has always endeavored to prevent even the probability of unfairness.

Holding that the standard for evaluating the existence of improper pre-judgment in an adjudicative context is whether a disinterested observer may conclude that (the agency) has in some measures adjudicated the facts as well as the law of a particular case in advance of hearing it.

It is abundantly clear that few situations more severely threaten trust in the judicial process than the perception that the litigant never had a chance.

With PUEO, a party without standing, dictating what the issues were to be and confining them to only the eight criteria, and the hearing officer refusing to answer objections or reconsiderations until months later, this case was doomed from the start.

Even to this day, months after the close of the evidentiary portion of this hearing are minute orders still being produced to cover what should have been answered months ago. The documents records

show that the last 25-minute orders issued all came out no earlier than 45 days after the close of the hearings.

Dated this day: June 12, 2017

Harry Fergerstrom

Certificate of Service

I attest that a true and accurate of copy attached document has been served electronically or otherwise sent via U.S Postal service.

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Dated: June 12, 2017

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