

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF) Case No. HA-22-02
)
The Petition of Mauna Kea Hui for a) MINUTE ORDER NO. 2;
Declaratory Order Filed May 24, 2021)
) CERTIFICATE OF SERVICE
)
)
_____)

MINUTE ORDER NO. 2

On October 20, 2021, the Board of Land and Natural Resources issued Minute Order No. 1 in this matter, granting Petitioners MAUNA KEA ANAINA HOU, KEALOHA PISCIOTTA, CLARENCE KUKAUAKAHI CHING, DEBORAH J. WARD, PAUL NEVES, and KAHEA: THE HAWAIIAN-ENVIRONMENTAL ALLIANCE’s (collectively, “Petitioners”) request to open a new proceeding for a declaratory ruling for the limited purpose of determining whether Permittee UNIVERSITY OF HAWAI’I AT HILO has complied with Condition No. 4 of Conservation District Use Permit HA-3568. The Board served Minute Order No. 1 via email on the parties named in the Certificate of Service attached to Petitioners’ Motion,¹ filed May 24, 2021. Minute Order No. 1 invited the parties named in the Certificate of Service to file a briefing in response to the Petitioners’ Motion within fifteen (15) days of service of the Minute Order, and provided Petitioners ten (10) days after service of any responsive briefings to file a reply.

On November 8, 2021, E. KALANI FLORES (“Flores”), as an individual and on behalf of the FLORES-CASE ‘OHANA, filed a document entitled “State of Hawai’i Board of Land and Natural Resources Failure to Properly Serve Minute Order No. 1 to the Flores-Case ‘Ohana” (the “Flores Request”). The Flores Request asserts that Flores and the Flores-Case ‘Ohana were parties in Contested Case No. BLNR-CC-16-002 and requests leave to file a responsive brief and a reply brief in this instant declaratory action.

The Board hereby GRANTS the Flores Request to the extent it seeks leave to file a responsive brief to the Petitioners’ Motion. The responsive brief will be due within fifteen (15) days of service of this Minute Order No. 2. The responsive brief should be limited to issues raised in the Petitioners’ Motion and should not respond to the arguments raised in any of the other responsive briefings filed by other parties. The Board DENIES the Flores Request to the extent it seeks leave to file a reply brief. Per Minute Order No. 1, the only parties allowed to file a reply brief are the Petitioners.

¹ As in Minute Order No. 1, the term “Petitioners’ Motion” refers to the Petitioners’ “Motion to Reopen Hearing to Hear Motion to Confirm Non-Compliance With Condition No. 4, or Alternatively, Petition for Declaratory Orders Concerning the Same” filed with the Board on May 24, 2021.

The Petitioners will be allowed to file a reply to any responsive brief filed by Flores and the Flores-Case ‘Ohana within ten (10) days of service of any such responsive brief.

The Board has also been made aware that emails to two other parties on the certificate of service – Stephanie-Malia Tabbada and J. Leina‘ala Sleightholm – have bounced back as undeliverable. Thus, this Minute Order No. 2 along with copies of the Petitioner’s Motion and Minute Order No. 1 will be served on Tabbada and Sleightholm via U.S. mail at the addresses last on file with the Board in connection with Contested Case No. BLNR-CC-16-002. Pursuant to Hawaii Administrative Rule (“HAR”) § 13-1-13.2, Tabbada and Sleightholm may file and serve responsive briefs to the Petitioner’s Motion within seventeen (17) days of the date shown on the certificate of service of this Minute Order.² If Tabbada and Sleightholm wish to be served electronically only, they should indicate so and provide their correct email addresses in their briefings. The Petitioners may file a reply brief within ten (10) days of service of any responsive briefings by Tabbada or Sleightholm.

All documents filed in this case shall use the caption above. All documents shall be filed with Michael Cain, Custodian of Records, by sending an electronic copy (PDF) to Michael.cain@hawaii.gov. Documents sent after 4:30 p.m. shall be treated as filed the following business day. An electronic copy (PDF) of the filing shall be sent to the parties and to the Deputy Attorneys General advising the Hearings Officer and the Board at linda.l.chow@hawaii.gov and lauren.k.chun@hawaii.gov. Documents shall be served on the parties by the means set forth in the certificate of service to this Minute Order. The Flores Request was served on the Board via email, and thus, this Minute Order No. 2 and the certificate of service will indicate that service on Flores and the Flores-Case ‘Ohana will be made via email to Flores at 08ef80@gmail.com.

DATED: Honolulu, Hawaii, Nov 19, 2021.

Suzanne D. Case

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

Chris Yuen

CHRISTOPHER YUEN, Board Member

Doreen Nāpua Canto

DOREEN NĀPUA CANTO, Board Member

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

² HAR § 13-1-13.2 states: “Whenever a person has the right or is required to do some act within a prescribed period after the service of a document upon the person and the document is served by mail, two days shall be added to the prescribed period.” Thus, while Flores and the Flores-Case ‘Ohana will have 15 days after the date they are served by email to file their responsive brief, because Tabbada and Sleightholm will be served by U.S. mail only, they will have 17 days after the date of mailing shown on the certificate of service to file their responsive brief.

THOMAS OI, Board Member

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VERNON CHAR, Board Member



SAMUEL "OHU" GON III, Board Member

WESLEY KAIWI NUI YOON, Board
Member

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the following documents:

1. Minute Order No. 2, Dated Nov 19, 2021

Was duly served upon the following parties, by email, on Nov 19, 2021, 2021:

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E. Kalani Flores
Flores-Case ‘Ohana
08ef80@gmail.com

[CERTIFICATE OF SERVICE CONTINUES ON FOLLOWING PAGE]

The undersigned also certifies that a copy of the following documents:

1. Minute Order No. 2, Dated Nov 19, 2021.
2. "Petitioner's Motion to Reopen Hearing to Hear Motion to Confirm Non-Compliance With Condition No. 4, or Alternatively, Petition for Declaratory Orders Concerning the Same," filed May 24, 2021.
3. Minute Order No. 1, Dated October 20, 2021.

Was duly served upon the following parties, by U.S. mail, on Nov 19, 2021, 2021:

J. Leina'ala Sleightholm
P.O. Box 383035
Waikoloa, HI 96738

Stephanie-Malia Tabbada
P O Box 194,
Naalehu, HI 96772

DATED: Honolulu, Hawaii, Nov 19, 2021

S Michael Cain

Custodian of Records
Board of Land and Natural Resources