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Sent: Tuesday, April 25, 2017 3:14 PM
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Cc: Kealoha Pisciotta; Keo Von Gogh; Paul
Subject: KEALOHA PISCIOTTA, MAUNA KEA ANAINA HOU and PAUL K.NEVES JOINS WITH TEMPLE OF LONO MOTION FIR RECONSIDERATION RE EXHIBITS

Kealoha Pisciotta
In behalf of Pisciotta,
Mauna Kea Anaina Hou
And Paul K. Neves
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IN THE MATTER OF) Case No. BLNR-CC-16-002) A Contested Case Hearing Re Conservation) District Use Application (CDUA) (HA-)
3568) The Thirty Meter Telescope at the)) Mauna Kea Science Reserve, Kaohe Mauka,) Hamakua District, Island of Hawai'i,) ORDER 43 TMK (3) 4-4-015:009

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PETITIONERS KEALOHA PISCIOTTA, MAUNA KEA ANAINA HOU AND PAUL K. NEVES JOIN WITH TEMPLE OF LONO'S MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF MINUTE ORDER 43

I. INTRODUCTION

Comes now, Petitioner Ms. Kealoha Pisciotta in behalf of her self, Mauna Kea Anaina Hou and Mr. Paul K. Neves (hereafter "Petitioners") join with the Temple of Lono in objections MOTION for RECONSIDERATION and provided the following additions objections for reconsideration outlined below.

II. ARGUMENT

En Masse Exhibit Submission Was Reasonable

The Hearing Officer (hereafter HO) in Minute Order (hereafter MO) #43 did no include exhibits submitted that were submitted en Masse (e.g. "All B Series at p. 7). We take issue with this for the following reason and would like ask the HO to reconsider this ruling against the "B" series exhibits.

When the following Petitioners (Mauna Kea Anaina Hou, Kealoha Pisciotta , Paul K.Neves, Ms. Deborah J. Ward, Mr. Clarence Ku Ching, Mr.E. Kalani Flores, Ms. Pua Case, and the Flores-Case 'Ohana and KAHEA: The Hawaiian-Environmental Alliance) began their involvement in this Contested Case Hearing (hereafter CCH) we were represented

by Mr. Richard Naiwi'eha Wurderman (attorney at law). However, due to the HO scheduling Mr. Wurderman was not able to continue to represent us collectively in the CCH and all Petitioners except KAHEA: The Hawaiian-Environmental Alliance who later retained legal council, continued in the CCH Pro Se.

When our original exhibits were first submitted and identified, they were done so in a collective (en Masse) way and therefore all the Petitioners where related to all of the collective "B Series" exhibits. So all Petitioners could use and reference to the "B Series" Exhibits during the hearing. Similarly "our" witnesses were submitted in a similar fashion, in that, the witnesses for the Petitioners where not assigned to individuals Petitioners and all Petitioners were related initially. During the CCH the HO adopted procedure relating to the offers of proofs and or how Petitioners could object or not to witness testimony/statements and also how exhibits where offered for example. In example, the person who made offer of proof could not do cross or object.. This set the rule that Exhibits would to be handled at the end of the hearing and therefore in practice no actual opportunity was offered during the actual hearing to build a record in support of a specific exhibits for Petitioners..

En Masse, filing were reasonable also because the deadline for uploading all the exhibits was schedule before the transcripts were available and therefore there was no way to review the record to affirm which Petitioner used which exhibits during their specific cross exams or not. We wish the record to reflect that University or the Applicant (hereafter UH) did not object to Ms. Pisciotta's expressed concern when it was voiced at the end of the hearing phase of the CCH as she was concerned that the UH may abuse the HO " inclination" and while we were allowed to record some verbal objections we were specifically told to wait until the end of the hearing when it came building the record of our specific objections on individual exhibits.
No actual opportunity was provided to us at the close of the hearing to object or otherwise address exhibits.

What was offered instead was that the HO expressed doubt that there would many objections since the HO's inclination was to let most exhibits in anyways. However, and what causes us pause here is that now the UH has made many and large objections on the majority of the "B Series" exhibits yet we have had no opportunity to provide countervailing argument in support of our own exhibits. This biases us and violates our due process rights. We have now seen in practice, how this is done to the detriment of the Pro Se Petitioners.The UH did not object to the HO's inclination, no the UH instead held their hand and then ambushed everyone. This was A'ole Pono and while they have right to object they did so in a way to deceive and to injure the Petitioners (by Papering us all). We are Pro Se and we do not have a large legal staff to call upon or public funds to purchase transcripts on a daily basis. This reality has biased us as Pro Se Petitioners and it violates our due process rights.

A Fortiori Parties

We were remanded to redo this CCH, not because we failed but rather because the Board of Land and Natural Resources (hereafter BLNR), Attorney General (hereafter AG) and the responsible Deputies AG made reversible errors that violated our due process rights. We therefore are a fortiori parties, in that, we have been found to have standing by the BLNR, the lower courts and now the Hawai'i Supreme Court to raise this subject matter before this hearing. Why this is important Is that many of documents that were submitted into the record are actually to be considered governments documents because they have previously be admitted by BLNR and so they should be treated as government documents. For example, Just as we can't now be found not to have standing after a higher court has already found us to have said standing neither can documents previously admitted as apart of the record of a case, that was remanded to be retried now be rejected. This would only frustrate the justice it was intending to remedy.

HAR subsection 13-1-32.4 reads regarding 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 party may object, in the manner provided in section 13-1-35, to any part of such record."
[Eff and comp 2/27/09] (Auth: HRS §§91-2,171-6) (Imp: HRS §§91-2, 91-9, 171-6)

§91-10 Rules of evidence; official notice section provides the following:
In contested cases:
(1) Except as provided in section 91-8.5, any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The agencies shall give effect to the rules of privilege recognized by law;
(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original;"

The HO takes only the UH assertions and exhibits over and above the Petitioners documents from the previous hearings. We object to this because we have not been able to validate the accuracy of the UH documents by comparing the documents. For example, we are aware that Conservation District Use Application (hereafter CDUA) itself has been altered even after the close of the testimony section of the hearing has been close also. It was missing a signature and now has been signed after the witness (Mr. Lemmo) had been crossed on that specific document. In short, we object because we have not had an opportunity to compare the documents to make sure those two are in agreement and can be trusted.

Pro Se Parties
Pro Se parties, by law and precedent and in accordance with the Supreme Court of the United States decisions, may not be held to the same standard as a lawyer and/or attorney. Pro Se motions, pleadings and all papers should only be judged by their function and never their form. In summary, the Court must give additional latitude to Pro Se litigants who are to be held "to less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519 (1972).

CONCLUSION

We join with Petitioner Temple of Lono and request that in addition to joining we request that all of the "B Series" exhibits submitted En Masse all be received into as evidence.

/s/ KEALOHA PISCIOTTA
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In behalf Mauna Kea Anaina Hou, Paul K Neves and Kealoha Pisciotta

Dated: April 25, 2017