

Hawaii land board seeks quick dismissal of telescope appeal

November 15 2016, by Jennifer Sinco Kelleher

Hawaii's land board is urging the state Supreme Court to quickly dismiss an appeal by opponents of a proposed telescope on a dormant Big Island volcano that is viewed as sacred by some Native Hawaiians.

The appeal filed last week is premature because no final decision has been made on whether the Thirty Meter Telescope will receive a construction permit, state lawyers say in a motion. The opponents are appealing various decisions that have been made during an ongoing contested-case hearing process, including time limits for parties to question witnesses.

"Because of the statewide importance of the underlying contested-case hearing, the board requests that this court act as soon as possible," the motion said.

In 2011, telescope opponents requested so-called contested-case hearings before the land board approved a permit to build on conservation land. The hearings were held, and the permit was upheld. Opponents then sued.

In December 2015, the state Supreme Court revoked the permit, ruling the land board's approval process was flawed. That meant the application process needed to be redone, requiring a new hearing.

Permit applicant University of Hawaii at Hilo also wants the appeal dismissed. Their motion suggests the court appoint a special master who

would oversee the case. TMT International Observatory LLC, the nonprofit organization that wants to build the telescope, filed documents with the court Monday to join the motion.

The opponents appealed directly to the state Supreme Court because of a law that took in effect in August that allows certain contested-case hearing decisions to bypass the Intermediate Court of Appeals.

The motions to dismiss argue the appeal would create "piecemeal litigation."

"Indeed, allowing appeals such as this would open the door to interlocutory appeals of nearly any decision made during the course of a fact-finding proceeding, and ultimately undermine the entire proceeding," the university's motion said.

One of the reasons for the appeal is concern that the same lawyers from the state attorney general's office who argued unsuccessfully before the state Supreme Court continue to advise the land board and the hearing officer "in what is now supposed to be a fair and impartial process," Richard Wurdeman, the attorney who filed the appeal, said in an email Tuesday.

Lanny Sinkin, who is representing the traditional Native Hawaiian faith known as Temple of Lono, filed a similar appeal to the state Supreme Court on Monday. Temple of Lono, which is one of the parties in the contested-case hearings, claims violations of due process.

The hearings began last month, and they are scheduled to last into next month, possibly January. Telescope officials have said they want a permit in place by the end of the year or early next year in order to resume construction in 2018. They recently announced that a mountain in the Canary Islands, Spain, is the primary alternative in case the

telescope can't be built in Hawaii.

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