

NO. 29032

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

MAUNA KEA ANAINA HOU, ROYAL ORDER OF KAMEHAMEHA I,  
SIERRA CLUB, HAWAII CHAPTER and CLARENCE CHING  
Plaintiffs-Appellees/Cross-Appellants,

v.

UNIVERSITY OF HAWAII INSTITUTE FOR ASTRONOMY,  
Defendant-Appellant/Cross-Appellee,

and

BOARD OF LAND AND NATURAL RESOURCES, HARRY FERGESTROM,  
and HAWAII ISLAND ECONOMIC DEVELOPMENT BOARD, INC.,  
Defendants-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIV. NO. 04-1-0397)

ORDER

(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon consideration of: (1) Defendant-Appellant/Cross-Appellee University of Hawaii Institute for Astronomy's motion to dismiss its appeal; (2) Plaintiffs-Appellees/Cross-Appellants Mauna Kea Anaina Hou, Royal Order of Kamehameha I, Sierra Club, Hawaii Chapter, and Clarence Ching's response to the motion to dismiss; and (3) the records and files herein, it appears that: (1) on February 26, 2008, Defendant-Appellant/Cross-Appellee University of Hawaii Institute for Astronomy filed a notice of appeal from a circuit court order and subsequent judgment reversing in part and affirming in part a Board of Land and Natural Resources decision on a conservation district use permit and management plan; (2) on February 28, 2008, Plaintiffs-Appellees/Cross-Appellants Mauna Kea Anaina Hou, Royal Order of Kamehameha I, Sierra Club, Hawaii Chapter, and Clarence Ching filed a notice of cross-appeal from the circuit court's denial of a motion for attorney's fees; (3) Defendant-Appellant/Cross-Appellee University of Hawaii Institute for Astronomy now moves to dismiss its appeal; and (4) dismissal of the initial appeal does not require dismissal of

CLARENCE CHING  
SIERRA CLUB  
HAWAII CHAPTER  
PLAINTIFFS-APPELLEES/CROSS-APPELLANTS

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the cross-appeal. See Hawai'i Rules of Appellant Procedure (HRAP) Rule 4.1(d)<sup>1</sup>.

Therefore, IT IS HEREBY ORDERED that the motion to dismiss the appeal filed by Defendant-Appellant/Cross-Appellee University of Hawai'i Institute for Astronomy is granted. Each party shall bear its own appellate fees and costs related to the appeal filed by Defendant-Appellant/Cross-Appellee University of Hawai'i Institute for Astronomy.

IT IS FURTHER ORDERED that the cross-appeal filed by Plaintiffs-Appellees/Cross-Appellants Mauna Kea Anaina Hou, Royal Order of Kamehameha I, Sierra Club, Hawai'i Chapter, and Clarence Ching, which challenges the circuit court's denial of their motion for attorney's fees in the underlying case, remains pending. Any requests for appellate fees and costs related to the cross-appeal shall be resolved in accordance with HRAP Rule 38 after the appellate court issues a decision on the cross appeal.

DATED: Honolulu, Hawai'i, September 2, 2008.

  
Daniel R. Foley  
Presiding Judge

  
Associate Judge

  
Associate Judge

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<sup>1</sup> **Abandonment or dismissal of appeal.** If the appellant abandons the initial appeal or the appellate court dismisses it, the cross-appeal may nevertheless be prosecuted to its conclusion, if allowed by law. Within 14 days after the entry of the order dismissing the initial appeal, if there is a record to be transcribed, the cross-appellant shall, in accordance with Rule 10(b), serve on each cross-appellee and file with the clerk of the court appealed from, a notice to prepare a reporter's transcript of such parts of the proceedings as the cross-appellant deems necessary that are not already on file.