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Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF ) Case No. BLNR-CC-16-002  
)  
A Contested Case Hearing Re Conservation) **TEMPLE OF LONO**  
District Use Permit (CDUP) (HA-3568 for ) **MOTION TO VACATE RULING AND**  
The Thirty Meter Telescope at the Mauna ) **SUPPLEMENT RESPONSE TIME;**  
Kea Science Reserve, Ka'ohe Mauka, ) **MEMORANDUM IN SUPPORT;**  
Hamakua District, Island of Hawai'i ) **EXHIBIT 1 (DECLARATION OF**  
) **LANNY ALAN SINKIN); COS**  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_ )

**TEMPLE OF LONO MOTION TO VACATE RULING  
AND SUPPLEMENT RESPONSE TIME**

Now comes the Temple of Lono and moves the Board to vacate the Board's July 22, 2016, Minute Order No. 14 Denying Dwight J. Vicente's Motion to Disqualify Judge Riki May Amano (Ret.); State of Hawaii Lack of Jurisdiction to Hear this Contested Case Hearing and to provide a period of ten days in which responses to that motion can be filed.

This motion is supported by the accompanying Memorandum in Support of Temple of Lono Motion to Vacate Ruling and Supplement Response Time.

Dated: July 23, 2016

Respectfully Submitted,  
  
\_\_\_\_\_/s/\_\_\_\_\_  
Lanny Alan Sinkin  
Lay Representative  
Temple of Lono

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BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF ) Case No. BLNR-CC-16-002  
)  
A Contested Case Hearing Re Conservation ) **TEMPLE OF LONO MEMORANDUM**  
District Use Permit (CDUP) (HA-3568 for ) **IN SUPPORT OF MOTION TO**  
The Thirty Meter Telescope at the Mauna ) **VACATE RULING AND SUPPLEMENT**  
Kea Science Reserve, Ka'ohē Mauka, ) **RESPONSE TIME**  
Hamakua District, Island of Hawai'i )  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_ )

**TEMPLE OF LONO MOTION TO VACATE RULING  
AND SUPPLEMENT RESPONSE TIME**

**I. INTRODUCTION**

Hawaii Administrative Rule (HAR) §13-1-34 Motions states in relevant part:

(a) The presiding officer shall set the time for filing all motions and opposing memoranda, if any.

On June 17, 2016, the Hearing Officer in this proceeding convened a pre-hearing conference to discuss *inter alia* setting a schedule for the filing of pre-hearing motions and responses. See Minute Order No. 13.

At that pre-hearing conference, the Hearing Officer set July 18, 2016 as the deadline for filing pre-hearing motions.

The Hearing Officer also set August 1, 2016 as the deadline for filing Responses to pre-hearing motions.

These deadlines are memorialized in Minute Order No. 13 at 6.

By her rulings setting the deadlines for filing pre-hearing motions and responses to such motions, the Hearing Officer fulfilled the mandate of HAR §13-1-34(a).

On June 24, 2016, Intervenor Dwight J. Vicente filed his Motion to Disqualify Judge Riki May Amano (ret.); State of Hawaii Lack Jurisdiction to Hear this Contested Case Hearing; Certificate of Service.

On July 22, 2016, the Board of Land and Natural Resources denied Mr. Vicente's Motion. Minute Order No. 14 Denying Dwight J. Vicente's Motion to Disqualify Judge Riki May Amano (Ret.); State of Hawaii Lack of Jurisdiction to Hear this Contested Case Hearing dated July 22, 2016.

Thus, the Board denied the motion ten days before the deadline set by the Hearing Officer for the filing of responses to pre-hearing motions.

## **II. ARGUMENT**

### **A. The Board denied Due Process by its premature ruling.**

The decision by the Board denied the other parties time the Hearing Officer had given them to respond to Mr. Vicente's motion, either in support or opposition. Minute Order 13 at 6.

The Temple of Lono intended to respond to Mr. Vicente's motion by filing a memorandum in support. See Exhibit 1. The premature ruling by the Board foreclosed the filing of that response. Id.

Shortening the time provided by the Hearing Officer for the filing of responses was done in a capricious and arbitrary manor. There was no notice to the parties of the Board's intent to shorten the time for response or to enter a

premature decision. The parties, therefore, had no opportunity to object to the change in the briefing schedule or to accelerate any response to meet the new deadline.

**B. The premature ruling by the Board is an indication of bias.**

The denial of Mr. Vicente's motion prior to the time expiring for responses to be filed is an indication of bias on the part of the Board.

The Board apparently decided that there was nothing anyone could file that would influence the Board's decision on the motion, so the Board cut off response time that the Hearing Officer had provided.

This prejudging of a motion challenging the jurisdiction of the agency is similar to approving the CDUA and then holding a contested hearing, a process that caused the Hawai'i Supreme Court to vacate the permit issued earlier by the Board. *Mauna Kea Anaina Hou v. Board of Land and Natural Resources*, 136 Hawaii 376, 363 P.3d, 224, 237 (2015)

This latest evidence of prejudgment by the Board may well be based on advice from attorneys whose objectivity is already called into question. DOC-95

**C. The Board should vacate its ruling and provide supplemental time for filing responses to the initial motion.**

In order to cure the damage to the Due Process rights of the parties, the Board should vacate Minute Order 14 denying Mr. Vicente's motion and provide a period of ten days in which parties can file responses to the motion.

While vacating the ruling and providing additional time for responses to the motion to be filed may cure the particular violation of Due Process in this instance,

such an action will not remove the taint of bias that the Board's ruling injected into this proceeding.

### **III. CONCLUSION**

The intent of the Board to grant the CDUA is already clear from the earlier attempt to grant the permit prior to holding the contested case.

This latest act demonstrating bias undermines any argument that the Board learned a lesson from that earlier failure.

Those appearing to contest the CDUA are at a distinct disadvantage.

The least the Board can do is vacate the premature ruling and grant another ten days for the parties to respond to the motion.

Dated: July 23, 2016

Respectfully Submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Lanny Alan Sinkin  
Lay Representative  
Temple of Lono

**EXHIBIT 1**  
**DECLARATION OF**  
**LANNY ALAN SINKIN**

BOARD OF LAND AND NATURAL RESOURCES  
FOR THE STATE OF HAWAI'I

IN THE MATTER OF ) Case No. BLNR-CC-16-002  
 )  
A Contested Case Hearing Re Conservation) **DECLARATION OF**  
District Use Permit (CDUP) (HA-3568 for ) **LANNY ALAN SINKIN**  
The Thirty Meter Telescope at the Mauna )  
Kea Science Reserve, Ka'ohē Mauka, )  
Hamakua District, Island of Hawai'i, )  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_ )

**DECLARATION OF LANNY ALAN SINKIN**

I, LANNY ALAN SINKIN, hereby declare the following to be true and correct:

1. Prior to his filing the motion at issue here, I had discussions with Intervenor Dwight J. Vicente about his intended filing.
2. In those discussions, Mr. Vicente shared information about the historical importance to the legal history of Hawai'i of certain documents, such as the Northwest Ordinance.
3. His information was new to me.
4. After Mr. Vicente filed his Motion to Disqualify Judge Riki May Amano (ret.); State of Hawaii Lack Jurisdiction to Hear this Contested Case Hearing, I reviewed that filing.
5. Based on that review and my prior discussion with Mr. Vicente, I decided to file a memorandum in support of Mr. Vicente's motion.
6. I had other pleadings to prepare first.
7. I knew from the Hearing Officer's rulings in the June 17 pre-hearing conference that I had until August 1 to file my response.
8. On July 22, I received the ruling by the Board of Land and Natural Resources denying Mr. Vicente's motion.
9. This ruling came prior to my having filed a response to the motion, even though my time to file had not expired.
10. The Board's ruling denied me the opportunity to file a response.

11. The Board's ruling came without any notice.

12. The Board offered no opportunity to object to the Board changing the briefing schedule set by the Hearing Officer.

13. I consider the Board's ruling a violation of my Due Process right to file a response prior to the deadline set by the Hearing Officer.

Dated: July 23, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
Lanny Alan Sinkin



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Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF ) Case No. BLNR-CC-16-002  
)  
A Contested Case Hearing Re Conservation)  
District Use Permit (CDUP) (HA-3568 for ) **CERTIFICATE OF SERVICE**  
The Thirty Meter Telescope at the Mauna )  
Kea Science Reserve, Kaohe Mauka, )  
Hamakua District, Island of Hawai'i, )  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the Temple of Lono Motion to Vacate Ruling and Supplement Response Time; Memorandum in Support, Exhibit 1 (Declaration of Lanny Alan Sinkin) was served on the following parties by eMail:

"Judge Riki May Amano (Ret.)" <rma3cc@yahoo.com>, "Julie China Deputy Attorney General Land and Transportation Division" <julie.h.china@hawaii.gov>, "Michael Cain" <michael.cain@hawaii.gov>, "Ian Sandison" <isandison@carlsmith.com>, "Richard N. Wurdeman" <RNWurdeman@RNWLaw.com>, "Watanabe Ing LLP" <rshinyama@wik.com>, "Harry Fergerstrom" <hankhawaiian@yahoo.com>, "Richard L DeLeon" <kekaukike@msn.com>, "Mehana Kihoi" <uhiwai@live.com>, "C. M. Kaho'okahi Kanuha" <kahookahi@gmail.com>, "Joseph Kualii Lindsey Camara" <kualiic@hotmail.com>, "Lincoln S. T. Ashida" <lsa@torkildson.com>, "Jennifer Leina'ala Sleightholm" <leina.ala.s808@gmail.com>, "Maelani Lee" <maelanilee@yahoo.com>, "Lanny Alan Sinkin" <lanny.sinkin@gmail.com>, "Kalikolehua Kanaele" <akulele@yahoo.com>, "Stephanie-Malia:Tabbada" <s.tabbada@hawaiiantel.net>, "Tiffnie Kakalia" <tiffniekakalia@gmail.com>, "Glen Kila" <makakila@gmail.com>, "Brannon Kamahana Kealoha" <brannonk@hawaii.edu>, "Cindy Freitas" <hanahanai@hawaii.rr.com>, "William Freitas" <pohaku7@yahoo.com>

Dated: July 23, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
Lanny Alan Sinkin

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the Temple of Lono Motion to Vacate Ruling and Supplement Response Time; Memorandum in Support, Exhibit 1 (Declaration of Lanny Alan Sinkin) was served on the following parties by first class mail:

Michael Cain, Custodian of Records  
Office of Conservation and Coastal Lands  
1151 Punchbowl, Room 131  
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Harry Fergerstrom  
P.O. Box 951  
Kurtistown, Hawaii 96760

Dwight J. Vicente  
2608 Ainaola Drive  
Hilo, Hawaiian Kingdom

Dated: July 23, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
Lanny Alan Sinkin