

Lanny Alan Sinkin
P. O. Box 944
Hilo, Hawai'i 96721
(808) 936-4428
lanny.sinkin@gmail.com
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) **TEMPLE OF LONO REPLY TO**
The Thirty Meter Telescope at the Mauna) **TMT INTERNATIONAL, LLC'S**
Kea Science Reserve, Kaohe Mauka,) **OPPOSITION TO TEMPLE OF LONO**
Hamakua District, Island of Hawai'i,) **MOTION TO VACATE RULING AND**
) **SUPPLEMENT RESPONSE TIME**
TMK (3) 4-4-015:009) **[DOC-127]; CERTIFICATE OF**
) **SERVICE**

**TEMPLE OF LONO REPLY TO TMT INTERNATIONAL, LLC'S OPPOSITION TO
TEMPLE OF LONO MOTION TO VACATE RULING
AND SUPPLEMENT RESPONSE TIME [DOC-127]**

I. Introduction

The Temple of Lono herein responds to TMT International, LLC's Opposition to Temple of Lono Motion to Vacate Ruling and Supplement Response Time [DOC-127] (hereinafter "TMT Opp.")

The Temple notes that the Applicant made no effort to defend the Board's actions in prematurely denying Mr. Vicente's motion, leaving the heavy lifting to TMT. The team effort being put forth by the Board, the Applicant, TMT, and PUEO is increasingly apparent.

The irony is that the premature ruling by the Board may later end up reversing any success TMT has in arguing for a grant of the permit because the

ruling demonstrates bias on the part of the Board and directly violated the Due Process rights of all the other parties to this proceeding.

The process here is not unlike the process that led to the vacating of the permit the first time. Much like holding the contested case after voting to approve the permit, the Board is denying challenges to the permit without allowing those supportive of the challenge an opportunity to be heard.

II. Argument

A. The argument that the Temple's motion is untimely is frivolous

The Temple apologizes for having to waste the Hearing Officer's time reading a reply to the TMT International Observatory opposition to the Temple's motion to vacate based on timeliness.

First of all, Mr. Vicente timely filed his motion on June 24, 2016, well in advance of the Hearing Officer's July 18, 2016 scheduled deadline for such motions. DOC-80.

The Board waited until after that deadline had passed to enter its ruling denying Mr. Vicente's motion on July 22, 2016. DOC-124. Obviously, a motion to vacate that ruling could not have been filed prior to the Hearing Officer's motions deadline because the ruling took place after the deadline had passed.

Once on notice of the ruling, the Temple filed its motion to vacate the next day. DOC-127.

Furthermore, there is a certain irony (and *chutzpa*) in the TMT argument to strictly enforce the motions schedule set by the Hearing Officer. It is the Board that chose to enter a ruling on Mr. Vicente's motion prior to the time expiring that the

Hearing Officer had provided for responses to be filed. That ruling trampled all over the Hearing Officer's authority to set the schedule and over the schedule that she set.

Now TMT wants to see the Hearing Officer's schedule strictly enforced.

B. The Temple is not seeking reconsideration.

The irony continues with the suggestion by TMT that the Temple is seeking reconsideration of the ruling.¹

The Temple was clear in the motion to vacate that the ruling itself is illegitimate because it denies all parties to this proceeding the opportunity to respond to a motion filed by one of the parties, prior to a ruling being entered.

The arguments made by TMT for why reconsideration should be denied only highlight why the entire process of the ruling is void *ab initio*.

The TMT cites the Hawai'i Supreme Court as explaining:

[T]he purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion. Reconsideration is not a device to relitigate old matters or to raise arguments or evidence that could have and should have been brought during the earlier proceeding.

TMT Opp. at 3.

The rule on reconsideration assumes that there was consideration in the first place. Here that was not the case.

III. CONCLUSION

The action by the Board to prematurely deny Mr. Vicente's motion denied the

¹ Of course, according to TMT's unique theory of timeliness, a motion for reconsideration would also be untimely because it would be filed after the Hearing Officer's July 18 deadline.

opportunity for other parties to present evidence and arguments. In doing so, the Board denied the Due Process rights of the other parties. That denial parallels the actions of the Board that led to the Hawai'i Supreme Court vacating the earlier permit.

All of the arguments and evidence presented by TMT may be well argued and relevant to the challenges raised by Mr. Vicente. Those arguments and evidence are, however, irrelevant to the motion to vacate. TMT is simply adding insult to injury by entering further arguments and evidence in to the record against Mr. Vicente's motion, while all other parties are censored out of the process.

There is only one cure for the error the Board made in their premature denial of Mr. Vicente's motion – vacate that order and provide at least ten days time for all other parties to file responses to the motion.

Dated: August 2, 2016 Puako, Hawaii

_____/s/_____
Lanny Alan Sinkin
Lay Representative for Temple of Lono

Lanny Alan Sinkin
P. O. Box 944
Hilo, Hawai'i 96721
(808) 936-4428
lanny.sinkin@gmail.com

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 REPLY TO TMT INTERNATIONAL, LLC'S OPPOSITION TO TEMPLE OF LONO MOTION TO VACATE RULING AND SUPPLEMENT RESPONSE TIME [DOC-127]** 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: August 3, 2016

_____/s/_____
Lanny Alan Sinkin

Lanny Alan Sinkin
P. O. Box 944
Hilo, Hawai'i 96721
(808) 936-4428
lanny.sinkin@gmail.com

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 REPLY TO TMT INTERNATIONAL, LLC'S OPPOSITION TO TEMPLE OF LONO MOTION TO VACATE RULING AND SUPPLEMENT RESPONSE TIME [DOC-127]** 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
Honolulu, Hawai'i 96813
Michael.cain@hawaii.gov

Harry Fergerstrom
P.O. Box 951
Kurtistown, Hawaii 96760

Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

Dated: August 4, 2016

_____/s/_____
Lanny Alan Sinkin