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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**  
The Thirty Meter Telescope at the Mauna ) **MOTION FOR REASONED**  
Kea Science Reserve, Kahohe Mauka, ) **EXPLANATIONS AND EXTENSION**  
Hamakua District, Island of Hawai'i, ) **OF TIME; MEMORANDUM IN**  
TMK (3) 4-4-015:009 ) **IN SUPPORT; COS**  
\_\_\_\_\_ )

**TEMPLE OF LONO MOTION FOR REASONED EXPLANATIONS  
AND EXTENSION OF TIME**

NOW COMES the Temple of Lono and moves the Hearing Officer to provide reasoned explanations for excluding issues proposed by the Temple and numerous other parties from the issues to be heard in the contested case hearing.

The Temple also moves the Hearing Officer to extend the time for filing motions for reconsideration of any decision regarding whether an issue will be heard in this proceeding until two weeks after the reasoned explanations for any exclusion of an issue are filed in the Documents Library.

This motion is supported by the accompanying Memorandum.

Dated: September 26, 2016

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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Lanny Alan Sinkin  
Lay representative for Temple of Lono

Received  
Office of Conservation and Coastal Lands  
2016 Sept 26 9:44 am  
Department of Land and Natural Resources  
State of Hawaii

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

**I. INTRODUCTION**

On July 18, 2016, PUEO filed its "Motion to Set Issues." [DOC-99].

Other parties filed responses to that motion. See DOC-281 (Minute Order No. 19 dated September 23, 2016 containing an Order Setting Issues) at 2.

In that Minute Order, the Hearing Officer states:

After considering the [PUEO] Motion, all related written and oral submissions from counsels and/or parties, and the entire record, the Hearing Officer requested that PUEO counsel, Lincoln Ashida, Esq., submit a proposed minute order granting the Motion, no later than September 9, 2016. The Hearing Officer also established a deadline for responses to the proposal, September 19, 2016.

Ibid. at 3.

The Temple believes that the record will reflect that the Hearing Officer instructed Mr. Ashida to prepare a list of issues raised by all the parties, not simply

an order granting PUEO's initial motion. The parties could then respond with any additional issues PUEO did not include.

The parties had already responded to PUEO's initial motion. *Ibid.* at 2.<sup>1</sup> For PUEO to be instructed to draw up a proposed minute order granting the initial motion to which all parties would then have an opportunity to file responses would simply duplicate the litigation that had already taken place regarding the initial PUEO motion.

Nevertheless, PUEO submitted an order that simply granted the initial PUEO motion with some minor exceptions. DOC-256. The PUEO order did not contain any of the issues identified for hearing by other parties. *Compare* DOC-256 with DOCs-265, 266, 269, 270, 271, 272, 273, and 275.

The Hearing Officer acknowledged receiving the responsive filings from other parties. DOC-281 at 3-4. The Hearing Officer did not make a ruling on any of the proposed issues at the hearing on the PUEO motion.

The Hearing Officer stated:

The Motion, all related [written] and oral submissions from counsels and/or parties, the Proposed Minute Order and all submissions related thereto, all applicable law, for [sic] and the entire record having been considered by the Hearing Officer, and for good cause shown,  
IT IS HEREBY ORDERED that the motion is GRANTED.

DOC-281 at 4.

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<sup>1</sup> The Temple believes that the record will reflect that the Hearing Officer told Mr. Ashida that Mr. Ashida would "have to do the work." If the work was drafting an order that simply granted the initial PUEO motion, obviously there was little work to be done. If the work was to incorporate the issues raised by other parties into an order, that work would be a substantial undertaking to include oral and written presentations by the other parties. *Ibid.* at 3-4.

The Minute Order also identified certain issues to be excluded from the issues to be heard and provided explanations for those exclusions. *Ibid.* at 5.

The Minute Order set a deadline for submission of motions to reconsider as “no later than **3 business days** after the date this motion and order are filed in the Document Library.” *Ibid.* at 5-6 (emphasis in original).

## II. ARGUMENT

### A. The Minute Order and/or Order violate the Due Process rights of the Temple and many other parties submitting responses to the proposed PUEO order.

The Temple argues that the Minute Order’s failure to provide reasoned explanations for the exclusion of issues, other than the issues discussed on page 5 of DOC-281, violates the Due Process rights of the Temple and all other parties filing proposed issues that were excluded without explanation.

There are four categories of issues addressed in Minute Order 19 either directly or *sub silentio*: (1) issues identified in the initial PUEO motion, (2) issues included in the initial PUEO motion and excluded in the PUEO proposed Minute Order, (3) issues specifically excluded in the initial PUEO motion and in the Minute Order and/or Order, and (4) issues raised by parties, other than PUEO, and excluded *sub silentio* by the Hearing Officer.

This motion addresses the fourth category.

After providing an opportunity for all parties to file responses to whatever the Hearing Officer ordered Mr. Ashida to prepare, the Minute Order and/or Order excludes almost all those issues. *Compare* DOC-281 with DOCs-265 (Temple of Lono proposed issues), 266, 269, 270, 271, 272, 273, and 275.

While giving a reasoned explanation for excluding the issues PUEO wished to have excluded, DOC-99 at 5-6 , DOC-256 at 4-5 , DOC-281 at 5, the Minute Order and/or Order contains no reasoned explanation as to why issues presented by the other parties, Ibid. at 3-4, including the Temple of Lono, are excluded from the issues to be heard at the hearing.

With no reasoned explanation provided for excluding such issues, the Temple and other parties submitting those issues have no basis for filing a motion for reconsideration pursuant to HAR §13-1-39. Denying the parties a reasoned explanation, therefore, violates the Due Process rights of the parties to pursue reconsideration or subsequent judicial review based on the record below.

**B. The time to file motions for reconsideration should be extended to a reasonable period after the Hearing Officer provides the reasoned explanation for the exclusion of any issue proposed by a party.**

HAR §13-1-39 provides each party the opportunity to request reconsideration of any ruling by the presiding officer.

Without any explanation by the Hearing Officer of the basis for a ruling, the party seeking reconsideration has no basis from which to argue for reconsideration.

The absence of such explanations is the basis for the motion filed herein.

The time to file motions for reconsideration cannot legally begin until such time as the Hearing Officer provides the missing explanations.

The deadline for filing motions for reconsideration in the Minute Order, DOC-281 at 5-6, therefore, needs to be extended until some reasonable time after the missing explanations are filed in the Document Library.

Given the number of issues to be addressed, the three business days provided by the Hearing Officer for the filing of motions for reconsideration are insufficient. A period of two weeks from the date the order is filed would be more appropriate

### **III. Conclusion**

For the above and foregoing reasons, the Temple moves the Hearing Officer to provide a reasoned explanation for the exclusion of each issue raised in the submissions identified in the chart on pages 3 and 4 of DOC-281 and to extend the time for filing motions for reconsideration until two weeks after the ruling on a given issue is filed in the Document Library.

Dated: September 26, 2016

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Lanny Alan Sinkin

Lay representative for Temple of Lono

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\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the **Temple of Lono Motion for Reasoned Explanations and Extension of Time and Memorandum in Support** were served on the following parties by eMail on September 26, 2016:

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Dated: September 26, 2016

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