

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

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)
District Use Permit (CDUP) (HA-3568 for) **TEMPLE OF LONO MOTION**
The Thirty Meter Telescope at the Mauna) **FOR RECONSIDERATION;**
Kea Science Reserve, Kaohe Mauka,) **MEMORANDUM IN SUPPORT;**
Hamakua District, Island of Hawai'i,) **CERTIFICATE OF SERVICE**
TMK (3) 4-4-015:009)
_____)

TEMPLE OF LONO MOTION FOR RECONSIDERATION

Now comes the Temple of Lono pursuant to Hawaii Administrative Rules §
13-1-39 and moves the Hearing Officer to reconsider the ruling in DOC-281 at 5,
which excludes issues from being heard.

This motion is supported by the accompanying Memorandum.

Dated: September 28, 2016, Kurtistown, Hawai'i, Kingdom of Hawai'i

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

Received
Office of Conservation and Coastal Lands
2016 Sept 28 5:09 pm
Department of Land and Natural Resources
State of Hawaii

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

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**
The Thirty Meter Telescope at the Mauna) **FOR RECONSIDERATION**
Kea Science Reserve, Kaohe Mauka,)
Hamakua District, Island of Hawai'i,)
TMK (3) 4-4-015:009)
_____)

**TEMPLE OF LONO MOTION MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION**

I. INTRODUCTION

On August 5, the Hearing Officer convened a pre-hearing conference.

In the course of that conference, the Hearing Officer addressed various motions that raised issues concerning the continued existence of the Kingdom of Hawai'i and the implications of that continued existence for the status of the State of Hawai'i and the jurisdiction of the Hearing Officer.

At one point in the proceeding, without notice of her intent to do so or opportunity for the parties to respond to such an intent, the Hearing Officer ruled broadly that "the status of the State of Hawaii will not be an issue in this contested case hearing."

On August 7, 2016, the Temple filed its Motion for Reconsideration. DOC-178.

On August 15, 2016, the Temple filed its Withdrawal of Motion for Reconsideration without Prejudice. DOC-211.

On September 23, 2016, the Hearing Officer issued Minute Order No. 19 (Order Granting Perpetuating Unique Educational Opportunities, Inc.'s Motion to Set Issues DOC-99; Order Setting Issues.) (Hereinafter "Order"). DOC-281.

In the Order, the Hearing Officer ruled as follows:

The following issues **will not** be addressed in this contested case hearing inasmuch as: (1) they are not germane to the above-identified issues relating to this contested case hearing; and (2) the Hearing Officer has already been found to have subject-matter jurisdiction to conduct the contested case hearing, as authorized by the Board; **see** Minute Order 14 Denying Dwight J. Vicente's Motion to Disqualify Judge Riki Mae [sic] Amano (Ret.); State of Hawaii Lack of Jurisdiction to Hear this Contested Case Hearing [DOC-124], citing the U.S. Supreme Court decision in *Hawai'i v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009):

- The sovereignty of the Kingdom of Hawai'i or any other issues related to the purported existence of the Kingdom of Hawai'i;
- Challenges to the legal status of the State of Hawai'i; and
- Challenges to the State's ownership of and title to the lands related to this contested case hearing.

Order at 5.

The Temple herein refiles a motion for reconsideration.

The Temple of Lono urges reconsideration and vacating of the Order as it pertains to the issues set forth above.

II. ARGUMENT

The Temple of Lono is among the parties filing objections to the PUEO Motion, DOC-119, that the Hearing Officer has now granted.

The Temple explicitly objected to the attempt by PUEO to exclude the issues related to the Kingdom. Id.

The Temple argues that the following questions can be answered by the Hearing Officer: (1) Does the Kingdom still exist as a matter of law? (2) If the Kingdom still exists, does the Kingdom arguably have some claim to the national lands that belonged to the Kingdom prior to the overthrow? (3) Do the lands in question in this proceeding fall within the national lands that belonged to the Kingdom prior to the overthrow?

Ibid. (Memorandum at 8-9).¹

¹ TMT challenges the right of the Temple to raise the sovereignty issues by falsely. Notably, however, ToL's Motion to Intervene does not discuss or even mention sovereignty or the Kingdom of Hawaii. ToL therefore did not seek through its Motion to Intervene to present issues relating to sovereignty or the Kingdom of Hawai'i.

DOC-152 at 4, n.3.

Setting aside the erroneous legal assertion that an intervenor is less than a full party and can only raise issues included in the intervenor's initial petition, the statement regarding the Temple's intervention motion is factually incorrect.

In its Motion to Intervene, the Temple stated:

The failure of the occupying power and even our own people to recognize the traditional faith of our people calls for a reconciliation. That reconciliation includes the recognition of **the key role that the Pu'uhonua played in establishing the jurisdiction of the Kingdom.**

Watching the Hawaiian landscape, the **Temple of Lono witnessed various people stepping forward to reclaim the position of King or Queen.** One measure of the validity of such a claim would be their relationship with the Pu'uhonua.

Only one embraced that relationship by acknowledging that the King's kuleana is based on the foundation of the Pu'uhonua. **King Edmund Keli'i Silva, Jr. claimed his rightful position as protector and sovereign over the Pu'uhonua O Honaunau.** The King put the issue of restoring the sacred land base directly before the National Park Service.

The King announced his intention to enter the Pu'uhonua and remain there for an extended period to engage in spiritual practice, seek reconciliation, and confirm his claim to the spiritual land base.

The response was to threaten to arrest the King should he over stay the time period the National Park Service would allow him to enter and remain on the Pu'uhonua.

The foundation of the faith in the Pu'uhonua reaches to the heights of Mauna Kea. From the sustenance of food provided by the Pu'uhonua to the realm of the Gods on Mauna Kea, the faith encompassed all.

When the time is right, the King, supported by the Temple of Lono and others who recognize the need to reconcile the religious schism created within the Hawaiian community by the teachings of the missionaries, will enter and reclaim the Pu'uhonua. On that day, a great

The Temple argued that consideration of those issues would be germane to the Hearing Officer determining whether the Kingdom had a competing claim to the land that the State of Hawaii, through subordinate institutions, seeks to lease to a private, foreign corporation. *Ibid.* at 9.

The continued existence of the Kingdom may indeed have implications for the status of the State of Hawaii. The ruling by the Hearing Officer forecloses the Kingdom issues being considered because such consideration might raise questions about the status of the State of Hawaii.

The ruling by the Hearing Officer also misconstrues the United States judicial process. The basis for the ruling appears to have been that previous courts have decided the issues being raised regarding the status of the State of Hawaii.

There are two problems with that approach.

First, the law in the United States is a living thing – it changes over time.

Once the United States Supreme Court ruled that African Americans, whether free or enslaved, could not be citizens and could not be given standing in federal court. *Dred Scott v. Sandford*, 60 U.S. 393 (1857). Later came the Fourteenth Amendment to the Constitution to overturn that precedent.

Once African-Americans could be assigned to segregated schools. The Supreme Court changed the law. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954)

step forward will take place in renewing the civilization that once provided an example of wise stewardship of our Earthly Garden.
DOC-50, Exhibit C to Declaration of Frank Kamehameha Tamealoha Anuumealani Nobriga at 2-3 (emphasis added).

Once the President of the United States issued an executive order sending Japanese Americans to concentration camps. Executive Order 9066; F.R. Doc. 42-1563; Filed, February 21, 1942; 12:51 p.m. The order was later repealed.

Once women were not allowed to vote. Then came the Nineteenth Amendment to the Constitution granting that right.

Once gay people could not legally marry. The Supreme Court changed the law. *Obergefelle v. Hodges*, 576 U. S. ____ (2015).

Once the Kingdom of Hawai'i was illegally seized by the United States of America. While that injustice has yet to be corrected, the precedents of other injustices later corrected offers hope to the Hawaiian people.

Denying that the law could change denies that hope and incorrectly encases United States law in a deep freeze.

Second, the basis for arguing a change in the law would be that new facts and arguments have emerged that were never previously considered by the Judicial or Executive Branch. Those facts and arguments can only be placed in the record if those who intend to argue for a change in the law are given an opportunity to create that record.

While the Hearing Officer may ultimately rule that she does not have the authority to change the law, she cannot foreclose the parties from developing the record supporting that change being made by an appellate level court.

There is a third problem with the absolute denial of consideration for broadly stated issues, i.e. status of the State of Hawaii, sovereignty and ceded lands.

There may be issues within those issues that are relevant to the question of whether the permit in this proceeding should be or can be approved.

For example, the Hearing Officer cannot determine whether the Kingdom of Hawai'i Government should be recognized by the United States. That is a political question that is reserved to the Executive Branch.

The Hearing Officer can, however, make a factual finding that the actions of the Kingdom Government offered in evidence constitute a sufficient basis for finding that the Kingdom Government does have the attributes of statehood required by international law, treaties, and cases to be recognized as a state, again without addressing the question whether the United States should give diplomatic recognition to that state.

The Hearing Officer can make findings regarding the legitimacy of the annexation resolution, an issue that has not been ruled upon by the courts previously and which the Executive Branch now evades discussing. DOC-132 at 8-10.

If the Hearing Officer were to find that the Kingdom Government qualifies as a state, although not recognized by the United States, and/or found that the annexation of the Kingdom was legally ineffective, the Hearing Officer could find that the Kingdom arguably has a claim to the lands at issue in this proceeding or could find that the Kingdom does not have an arguable claim to the lands or could find that the Kingdom might have a claim that the Hearing Officer cannot resolve. However the Hearing Officer decided the issue, the issue would have been addressed and a record on appeal developed.

Those who seek to change the law could then build on the foundation of the record on these issues to make their arguments at the appellate level. To foreclose the creation of such a record would violate the Due Process rights of those who seek to change the law.

III. CONCLUSION

For the above and foregoing reasons, the Temple moves the Hearing Officer to vacate the portion of the Order that excludes the Kingdom issues. Order at 5.

Dated: August 7, 2016, Kurtistown, Hawai'i, Kingdom of Hawai'i

Respectfully submitted,

_____/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 Motion for Reconsideration and Memorandum in Support** was served on the following parties by eMail on September 28, 2016:

michael.cain@hawaii.gov, dlr.maunakea@hawaii.gov, isandison@carlsmith.com,
tlukwan@carlsmith.com, jpm@carlsmith.com, lmcaneley@carlsmith.com,
RNWurdeman@RNWLaw.com, rshinyama@wik.com, douging@wik.com, hankhawaiian@yahoo.com,
kekaukike@msn.com, uhiwai@live.com, kahookahi@gmail.com, kualiic@hotmail.com,
lsa@torkildson.com, njc@torkildson.com, leina.ala.s808@gmail.com, maelanilee@yahoo.com,
lanny.sinkin@gmail.com, akulele@yahoo.com, s.tabbada@hawaiiantel.net, tiffniekakalia@gmail.com,
makakila@gmail.com, brannonk@hawaii.edu, hanahanai@hawaii.rr.com, pohaku7@yahoo.com

and will be served by first class mail on September 29, 2016:

1. Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom
2. Harry Fergerstrom
P.O. Box 951
Kurtistown, HI 96760

Dated: September 28, 2016

_____/s/_____
Lanny Alan Sinkin