

Lanny Alan Sinkin  
P. O. Box 944  
Hilo, Hawai'i 96721  
(808) 936-4428  
[lanny.sinkin@gmail.com](mailto:lanny.sinkin@gmail.com)  
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 )  
District Use Permit (CDUP) (HA-3568 for ) **TEMPLE OF LONO MOTION FOR**  
The Thirty Meter Telescope at the Mauna ) **EXTENSION OF TIME FOR FILING**  
Kea Science Reserve, Kaohe Mauka, ) **OF FINAL WITNESS LIST AND**  
 ) **PREFILED TESTIMONY, EXHIBIT**  
Hamakua District, Island of Hawai'i, ) **LIST AND EXHIBITS, PREHEARING**  
TMK (3) 4-4-015:009 ) **STATEMENT, AND MOTIONS; COS**  
 )

**TEMPLE OF LONO MOTION FOR EXTENSION OF TIME FOR FILING OF FINAL  
WITNESS LIST AND PREFILED TESTIMONY, EXHIBIT LIST AND EXHIBITS,  
PREHEARING STATEMENT, AND MOTIONS**

Now comes the Temple of Lono and pursuant to HAR §13-1-34 and files its  
Motion for Extension of Time for Filing of Final Witness List and Prefiled Testimony,  
Exhibit List and Exhibits, Prehearing Statement, and Motions.

This motion is supported by the accompanying memorandum.

Dated: October 6, 2016

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

Received  
Office of Conservation and Coastal Lands  
2016 Oct 06 8:40 pm  
Department of Land and Natural Resources  
State of Hawaii

Lanny Alan Sinkin  
P. O. Box 944  
Hilo, Hawai'i 96721  
(808) 936-4428  
[lanny.sinkin@gmail.com](mailto:lanny.sinkin@gmail.com)  
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)  
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, ) **EXTENSION OF TIME FOR FILING OF**  
Hamakua District, Island of Hawai'i, ) **FINAL WITNESS LIST AND PREFILED**  
TMK (3) 4-4-015:009 ) **TESTIMONY, EXHIBIT LIST AND**  
\_\_\_\_\_ ) **EXHIBITS, PREHEARING**  
) **STATEMENTS, AND MOTIONS**

**TEMPLE OF LONO MEMORANDUM IN SUPPORT OF MOTION FOR EXTENSION OF TIME FOR FILING OF FINAL WITNESS LIST AND PREFILED TESTIMONY, EXHIBIT LIST AND EXHIBITS, PREHEARING STATEMENTS, AND MOTIONS**

**I. INTRODUCTION**

On September 20, 2016, the Hearing Officer issued a Notice scheduling for the first time a fixed date for the beginning of the Contested Case Hearing. DOC-276. The hearing was to be convened on October 11, 2016.

On October 3, 2016, at the Fifth Prehearing Conference, the Hearing Officer set out a schedule for matters to be dealt with prior to the Contested Case Hearing, continued the hearing until October 18, and scheduled some of the parties to provide the initial witnesses.<sup>1</sup>

<sup>1</sup> The Temple is one of the many intervenors that lack the funds to purchase the very expensive transcripts of this proceeding. The Hearing Officer has repeatedly refused to make the transcripts available for at least review, so that parties without

The three-week notice of the beginning of the Contested Case Hearing and the short time provided for completing pre-hearing matters have created a significant burden on the Temple for which the Temple seeks relief in the form of an extension of time.

## **II. ARGUMENT**

### **A. The Hearing Officer's decision not to prepare minute orders for motions ruled upon earlier now creates a burden on the parties.**

While the Hearing Officer did indicate more than once a wish to have the Contested Case Hearing in the month of October, that wish never became a fixed date until September 20.

Once the date was fixed, the Hearing Officer then imposed a schedule on the parties that provided inadequate time, violated the rules of practice, and failed to include pre-hearing matters that are still unresolved.

Despite repeated promises of minute orders to follow oral rulings, the Hearing Officer failed to produce such orders for most of the decisions during this proceeding. In the case of the Temple, a motion filed on June 21,[DOC-78], and ruled upon in August has still not produced a written order as of the date of this motion.

The Hearing Officer decision to delay issuance of such orders led to a decision at the October 3 hearing to have the prevailing party on all such motions prepare and submit a proposed order for every such motion. The Hearing Officer set October 5 at 4:30 p.m. as the deadline for such proposed orders.

---

a copy could determine which pages to order for a particular pleading. As a result, references to matters discussed or decided during hearings rely on notes taken, rather than being able to provide a citation or excerpt from the transcript.

The Hearing Officer then gave other parties until October 7 at 4:30 p.m. to respond to the proposed order.

The Hearing Officer scheduled herself to issue a minute order for each such proposed order on October 10.

The Hearing Officer set a deadline of October 13 for motions for reconsideration to be filed for the minute orders issued on the 10<sup>th</sup>.

This proposed order process is taking place at the same time as the preparations for the newly scheduled Contested Case Hearing are taking place. For example, in addition to the motions for reconsideration of minute orders being due on October 13, final witness identification and pre-filed statements, exhibit lists and exhibits, and prehearing statements are due on October 11<sup>th</sup>.

The overlap in the unfinished business of motions denied without a minute order and the short time available to complete all the items scheduled before the Contested Case creates a significant burden.

The Temple requests all matters related to the Contested Case Hearing be suspended until all pre-hearing matters identified herein and by other parties are addressed.

**B. The Hearing Officer's schedule related to proposed orders is particularly burdensome to the Temple of Lono.**

The Temple of Lono is now required to respond to three separate proposed orders in a two-day period while preparing to meet the hearing related deadlines. See DOC-310, DOC-315, and DOC-318. The short time frame in which to deal with multiple proposed orders is unduly burdensome. The Temple requests three additional business days in which to respond to the three proposed orders.

**C. The Hearing Officer's Schedule violates the Hawai'i Administrative Rules.**

In setting the issuance of minute orders to take place on October 10 and requiring motions for reconsideration to be filed on October 13, the Hearing Officer violated the Hawai'i Administrative Rules.

HAR §13-1-39 states: "a motion for reconsideration shall be made not later than five business days after the decision ...."

The Hearing Officer has provided only two business days.

The rules provide five business days from October 5. The Temple's response to the proposed orders should not be due until October 12.

The Hearing Officer should revise the schedule to provide all parties the entire time allotted by the rules for motions to reconsider.

**D. The issues in this case have not been decided.**

One of the central elements of the Contested Case Hearing is the issues to be heard. There has been extensive litigation on that question resulting in Minute Order 19 [DOC-281]. That order identified specific issues to be included in the hearing, identified a few issues to be excluded for which explanations were offered, and excluded numerous other issues with no explanation was offered.

The Hearing Officer's failure to provide reasoned explanations for excluding numerous issues proposed by many different parties denies those parties an opportunity to file a motion for reconsideration. As a result, the Temple filed a motion seeking such explanations. DOC-286.

The Hearing Officer has not scheduled that motion for responses, let alone made a ruling. While the Hearing Officer may have no intention of changing her

mind, regardless of arguments presented, the parties with excluded issues still have a Due Process right to pursue reconsideration and cannot do so until the Hearing Officer provides reasoned explanations.

The absence of certainty as to the issues impacts the entire rest of the schedule. Parties cannot provide an opening statement with a position on issues that have not yet been determined. Parties cannot identify witnesses and exhibits with the issues undetermined.

The Hearing Officer should suspend any further requirements for pre-hearing actions on the part of all parties until such time as the Hearing Officer provides a reasoned explanation for issues excluded and adequate time to resolve motions for reconsideration that may be filed based on the reasons provided.

**E. The Hearing Officer has not scheduled pre-hearing items that are still pending.**

There are motions filed other than the motion for reasoned explanation that have also not been scheduled for responses and disposition, including a motion to recuse the Hearing Officer. The Temple is filing its Motion to Schedule Pending Motions to address this omission

As some of the unscheduled motions could be dispositive of this case, those motions should be addressed prior to the Contested Case Hearing.

### III. CONCLUSION

For whatever reasons, the Hearing Officer has pushed for the initiation of the Contested Case Hearing with a vigor that prejudices those contesting the permit application. The Temple moves the Hearing Officer to reschedule all items in accordance with the suggested schedule in this motion.

DATED: October 6, 2016

\_\_\_\_\_/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](mailto:lanny.sinkin@gmail.com)  
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)  
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 EXTENSION OF TIME FOR FILING OF FINAL WITNESS LIST AND PREFILED TESTIMONY, EXHIBIT LIST AND EXHIBITS, PREHEARING STATEMENTS, AND MOTIONS** was served on the following parties by eMail on October 6, 2016:

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

and first class mail on October 7, 2016:

1. Dwight J. Vicente  
2608 Ainaola Drive  
Hilo, Hawaiian Kingdom
2. Harry Fergerstrom  
P.O. Box 951  
Kurtistown, HI 96760
3. Michael Cain, Custodian of Records  
Office of Conservation and Coastal Lands  
1151 Punchbowl, Room 131  
Honolulu, Hawai'i 96813

Dated: October 6, 2016

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