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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)  
District Use Permit (CDUP) (HA-3568 for ) **TEMPLE OF LONO RESPONSE TO**  
The Thirty Meter Telescope at the Mauna ) **UNIVERSITY OF HAWAI'I AT HILO**  
Kea Science Reserve, Kaohe Mauka, ) **[PROPOSED] MINUTE ORDER NO. \_\_\_**  
Hamakua District, Island of Hawai'i, ) **DENYING TEMPLE OF LONO MOTION**  
TMK (3) 4-4-015:009 ) **TO DISMISS OUT OF TIME**  
) **[DOC-179] [318]; EXHIBITS 1 AND 2;**  
\_\_\_\_\_ ) **COS**

**TEMPLE OF LONO RESPONSE TO UNIVERSITY OF HAWAI'I AT HILO**  
**[PROPOSED] MINUTE ORDER NO. \_\_\_ DENYING TEMPLE OF LONO MOTION TO**  
**DISMISS OUT OF TIME [DOC-179] [318]**

The title of Applicant's proposed order (hereinafter "PO") is misleading. The Temple of Lono Motion to File Motion out of Time [DOC-179] was denied. Based on that denial, the Hearing Officer would not allow the Temple of Lono Motion to Dismiss; DOC-179, Exhibit 2; to be filed.

In the first paragraph of the Order, the Applicant refers to the subject of this order as a "*Motion to Intervene.*" PO at 1. The subject of this Order is a Motion to File a Motion out of Time. [DOC-179].

The proposed order states that "the Hearing Officer heard arguments opposing the Motion on the ground that there is no good cause shown to file additional motions after the motions deadline." PO at 4. The proposed order

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continues that “the Hearing Officer finds no good cause was shown to grant the Motion.” *Id.*

The only things missing are an identification of the good causes presented by the Temple and any explanation as to why those causes were not good enough. *Ibid. passim.*

The absence of any explanation as to what causes were considered and why they were rejected violates the Temple’s Due Process rights by making a motion for reconsideration impossible and leaves an inadequate record for judicial review.

As good causes for requesting an opportunity to file a motion out of time, the Temple provided the following arguments: (1) despite a plethora of pleadings all filed at the same time, including the pleading containing the attack by the Applicant on the Temple of Lono, only three days before a scheduled pre-hearing conference, the Temple brought the attack by the Applicant promptly to the Hearing Officer’s attention, *ibid.* at 2 *citing* DOC-76; (2) the attack by the Applicant took place after the time for filing pre-hearing motions had expired; and (3) the implications of the attack “go to the heart of the decision the Hearing Officer is being asked to make in terms of recommending whether or not the University CDUA should be granted.” DOC-179 at 3.

The proposed order should identify those three arguments for good cause and explain why they are not good enough. Suggested explanations could be:<sup>1</sup>

-- The Temple notifying the Hearing Officer of the attack took too long.

Served on August 1<sup>st</sup>, the Temple did not file its reply until August 3<sup>rd</sup>. While the

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<sup>1</sup> Caution: Sarcasm alert.

rules do not provide for a reply at all, the Temple's reply is nonetheless too late. The fact that the Hearing Officer was also served on August 1 does not relieve the Temple of its obligation to bring matters to the attention of the Hearing Officer in a timely manner.

The fact that the time for filing pre-hearing motions had expired is no excuse. Once the Temple became aware of the attack, the Temple should have chartered a time machine to go back to a date prior to the expiration of the time for filing pre-hearing motions and filed its motion responding to the attack before the attack took place.

As far as the seriousness of the attack and the questions it raises about possible disqualification, the Temple is aware that abuse of the traditional Hawaiian faith is a long-standing practice in the Islands. DOC-50, Declaration of Tahuna Frank Kamehameha Tamealoha Anuumealani Nobriga, Exhibit C at 2. ("The suppression of the traditional faith has been a long-standing practice of the State of Hawai'i.")

The dominant religion defines the Hawaiian faith, sometimes in the most disrespectful and derogatory way. Exhibit 1 (Defaced Monument – Profanity Alert).

Constitutional and legal protections are simply words on paper that are not enforced where the traditional Hawaiian faith is concerned.

This legal impotence is particularly acute when the effort to enforce the law on behalf of the faith impedes a predetermined outcome of a proceeding, such as this one, in which so much money is at stake.

The Temple should shed its idealism and get in touch with the real world. The Hearing Officer had to deny the motion because that is what the Applicant

needed to have happen in order to protect its path to the permit. If the Temple is looking for Due Process and can't take the abuse, it should withdraw from the proceeding.

Furthermore, the "University" draft of this proposed order demonstrates a fundamentalist approach to the schedule for pre-hearing motions that is absolutist and uncompromising. Even a motion relevant to whether the contested case should continue cannot be heard because a particular date has been passed. The Applicant's proposed order would have the Hearing Officer portrayed as dedicated to conformity to a doctrine that schedules are set in stone at the expense of higher principles of Due Process guarantees of the right to be heard. She must abandon her discretion to change a schedule she arbitrarily set.

There appears to be no concern that the permit may be given to an unqualified applicant. Nor is there any concern about the damage such an applicant might do to our society or to the reputation of the agency granting the permit.

Due process for the party seeking to bring out a possibly dispositive issue is denied by an order in service to granting the permit at all costs.

The telescope appears to have generated a cabal that is subverting the legal processes of the State and treating this proceeding as if all parties are in servitude to the Applicant and its partners in the telescope project. Science has taken on the mantle of a fanatical religion and attempted to impose its religious agenda on our community.

The Hearing Officer can follow the lead of the "University."

Alternatively, the Hearing Officer could vacate her ruling and grant the motion to file motion out of time. That decision might produce an order guided by applicable law. See Exhibit 2.

Dated: October 7, 2016

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

# EXHIBIT 1

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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) **TEMPLE OF LONO PROPOSED**  
District Use Permit (CDUP) (HA-3568 for ) **ALTERNATIVE MINUTE ORDER NO. \_\_**  
) **GRANTING MOTION TO FILE MOTION**  
) **OUT OF TIME[DOC-179];**  
The Thirty Meter Telescope at the Mauna ) **COS**  
Kea Science Reserve, Kaohe Mauka, )  
Hamakua District, Island of Hawai'i, )  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_ )

**TEMPLE OF LONO**  
**PROPOSED ALTERNATIVE MINUTE ORDER NO. \_\_ GRANTING MOTION TO**  
**FILE MOTION OUT OF TIME [DOC-179]**

On June 21, 2016, the Temple of Lono filed its Motion for Partial Summary Judgment. DOC-78.

On August 1, 2016, the Applicant filed its Opposition to Temple of Lono Motion for Partial Summary Judgment. DOC-135. That pleading contained an extensive attack on the Temple of Lono, characterizing the Temple as a fanatical religious organization bent on imposing its religion on everyone else no matter what harm that brings to society. *Ibid.* at 14-15.

On August 3, 2016, the Temple of Lono filed its Reply to the University of Hawaii at Hilo's opposition to Temple of Lono's motion for partial summary judgment. DOC-176. The Temple's reply describes the Applicant's attack on the

Temple as “a full scale assault on the Temple that is both unsupported by the facts and beyond the bounds of decency.” Ibid. at 7. The Temple presented extensive excerpts from the attack to support the Temple’s description of the attack as “designed to portray the Temple as indistinguishable from ISIL or ISIS.” Ibid. at 8.

The Temple suggested that “[p]erhaps the Hearing Officer can discourage any further attacks.” Ibid at 9.<sup>1</sup>

The Applicant launched its attack on the Temple after the time for pre-hearing motions had expired. Minute Order No. 13, DOC-115 at 6.7.

Because the Temple considered the Applicant’s attack to disqualify the Applicant from receiving the permit sought in this proceeding, the Temple filed a motion requesting to file a motion out of time. DOC-179.

The motion that the Temple sought to file argued that the Applicant was disqualified from receiving a permit from a State agency because that permit required a commitment to abide by the State Constitution and laws that protect the rights of Native Hawaiians to practice their religion. Ibid., Exhibit 2. The disdain and disrespect demonstrated by the Applicant toward the traditional Hawaiian faith eliminated any expectation that the Applicant would keep such a commitment.

As good cause for requesting an opportunity to file a motion out of time, the Temple provided the following arguments: (1) despite a plethora of pleadings all filed at the same time only three days before a scheduled pre-hearing conference, the Temple brought the attack by the Applicant promptly to the Hearing Officer’s attention, ibid. at 2 *citing* DOC-76; (2) the attack by the Applicant took place after

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<sup>1</sup> The Hearing Officer chose not to admonish the Applicant at any time regarding the libelous attack.

the time for filing pre-hearing motions had expired; and (3) the implications of the attack “go to the heart of the decision the Hearing Officer is being asked to make in terms of recommending whether or not the University CDUA should be granted.”

The motion to dismiss presented an even more comprehensive examination of the attack and its implications. DOC-179, Exhibit 2.

On August 9, 2016, TIO filed its objections to the Temple’s motion to file out of time. DOC-183.

On August 10, 2016, the Applicant filed its opposition to the Temple’s motion to file out of time. DOC-194.

On August 22, 2016, Intervenor Glen Kila filed his Memorandum in Support of the Temple’s motion to file out of time.

On August 22, 2016, Intervenor Leina’ala Sleightholm filed her Memorandum in Support of the Temple’s motion to file out of time. DOC-235.

On August 22, 2016, Intervenor Harry Fergerstrom filed his Memorandum In Support For Temple of Lono’s Motion to File Motion Out of Time.

On August 29, 2016, at a pre-hearing conference, the Hearing Officer orally denied the Temple Motion to File Motion Out of Time.<sup>2</sup>

Considering the entire record and upon further reflection, the Hearing Officer herein reverses that decision and grants the motion.

IT IS HEREBY ORDERED that the motion is GRANTED for the following reasons:

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<sup>2</sup> The Temple is one of the parties unable to afford to purchase a transcript. The Hearing Officer has repeatedly refused to order the transcripts to be accessible to all parties. The Temple cannot, therefore, provide citations or excerpts of the record to support its representations as to what took place in the pre-hearing conference.

-- The Temple brought the Applicant's attack promptly to the Hearing Officer's attention.

-- The Temple provides good cause for not filing a motion to dismiss prior to the expiration of time to file pre-hearing motions. Obviously, the Temple could not file a motion responding to an attack that occurred after the expiration of the time for filing pre-hearing motions.

-- The seriousness of the attack is sufficient to raise a substantive question of disqualification that deserves to be heard.

The earlier order denying the Motion to File Motion Out of Time is Rescinded and the motion is Granted. The Motion to Dismiss will be considered filed as of the date of this Order. All Responses will be due ten days from that date.

The deadline for submission of any motion to reconsider this minute order shall be submitted no later than **Thursday, October 13, 2016 at 4:30 p.m.** Any **responses to motions to reconsider** shall be submitted no later than **Friday, October 14, 2016 at 4:30 p.m.**

Any motions to reconsider this Minute Order shall be treated as a non-hearing motion unless otherwise ordered by this Hearing Officer.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Judge Riki May Amano (Ret.)  
Hearing Officer

# EXHIBIT 2



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The Thirty Meter Telescope at the Mauna )  
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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 RESPONSE TO UNIVERSITY OF HAWAII AT HILO [PROPOSED] MINUTE ORDER NO. \_\_\_\_\_ DENYING TEMPLE OF LONO MOTION TO DISMISS OUT OF TIME [DOC-179] [318]** was served on the following parties by eMail:

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Dated: October 7, 2016

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