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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) **TEMPLE OF LONO**  
District Use Permit (CDUP) (HA-3568 for ) **SUBSTANTIVE JOINDER AND**  
The Thirty Meter Telescope at the Mauna ) **SUPPLEMENT TO PETITIONERS**  
Kea Science Reserve, Kaohe Mauka, ) **MAUNA KEA ANAINA HOU ET AL.'S**  
Hamakua District, Island of Hawai'i, ) **RENEWED MOTION TO DISQUALIFY**  
TMK (3) 4-4-015:009 ) **HEARING OFFICER; COS**  
\_\_\_\_\_)

**TEMPLE OF LONO SUBSTANTIVE JOINDER AND SUPPLEMENT TO PETITIONERS  
MAUNA KEA ANAINA HOU ET AL'S RENEWED MOTION  
TO DISQUALITY HEARING OFFICER**

On October 10, 2016, Petitioners Mauna Kea Anaina Hou, et al. filed their  
Renewed Motion to Disqualify Hearing Officer.

The Temple of Lono herein joins in support of that motion for the recusal of  
the Hearing Officer and incorporates herein by reference all the arguments and  
evidence presented by the Petitioners in their renewed motion.

In addition, the Temple submits the following as further support for recusal  
of the Hearing Officer:

The Hearing Officer in this proceeding has sanctioned bigotry directed  
against the Temple. The University of Hawai'i at Hilo, Applicant in this proceeding,  
directed a libelous attack against the Temple, essentially accusing the Temple of

Received  
Office of Conservation and Coastal Lands  
2016 Oct 10 4:00 pm  
Department of Land and Natural Resources  
State of Hawaii

being the equivalent of a terrorist religious organization, much like ISIS or ISIL. DOC-135 at 14-15.

In response to the attack, because the time scheduled for the filing of pre-hearing motions had expired, the Temple requested permission of the Hearing Officer to file a motion out of time addressing the attack and its implications for whether the Applicant is qualified to receive the permit being requested in this proceeding. DOC-179.

The Hearing Officer violated the Temple's right to be heard by denying the Temple's request to file a motion out of time. The Hearing Officer essentially gave the Applicant a pass, despite what the Temple considers proof of disqualifying character.

Not allowing the Temple to be heard on the disqualification issue is a Due Process violation similar to the one that led to the vacating of the permit granted earlier in this proceeding by the Hawai'i Supreme Court, i.e. voting to grant the permit prior to holding the contested case allowing people to be heard who opposed the permit. *Mauna Kea Anaina Hou v. Board of Land and Natural Resources*, 136 Hawai'i 376; 363 P.3d 224 (2015)

In this case, the Hearing Officer's ruling that the Temple could not file its motion to dismiss essentially ruled that the attack by the Applicant was not disqualifying, without giving the Temple the opportunity to argue the issue at all.

Later, the Temple submitted the issues that the Temple asserted should be heard in the contested case hearing. DOC-265. The Temple included the character of the Applicant as one such issue. *Ibid.*, Exhibit A at 1, Category 1.

The Hearing Officer excluded that issue when deciding what issues will be heard. DOC-281 at 4. The Hearing Officer again violated the Due Process rights of the Temple.

The Hearing Officer compounded the Due Process violations by refusing to issue an order providing a reasoned explanation for excluding the character disqualification issue.<sup>1</sup> Without such an explanation, the Temple had no basis for preparing a motion for reconsideration, a motion which the Temple had the right to file under the rules. HAR §13-1-39.

The failure to provide a reasoned explanation for the ruling excluding the character issue and for many other rulings excluding Temple issues also leaves the record on appeal incomplete. With no substantive reason given for a decision, an appellate body will have no choice other than to remand the issue back to the Hearing Officer for the required explanation to be made before judicial review can take place.

Still later, the Temple filed a motion asking the Hearing Officer to recuse herself based on her ruling that denied the Temple the opportunity to even file a motion based on the attack by the Applicant. DOC-262.

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<sup>1</sup> The Hearing Officer excluded numerous issues filed by parties contesting the permit application. Other than providing her reasons for excluding the Kingdom issues, DOC-281 at 5, she did not offer a reasoned explanation for any of the other exclusions.

The Hearing Officer directed all parties prevailing on a motion to prepare an order for her consideration. There were no proposed orders submitted regarding any of the issues excluded and not explained.

The Hearing Officer appears to be pretending that excluding issues identified by a party as relevant and material to the decision to be made in this proceeding does not constitute denial of an opportunity to be heard that legally needs to be explained.

The Hearing Officer ignored the motion and never scheduled the motion for briefing or decision. See DOC-324.

Based on this history, the Temple considers the evidence to be clear that the Hearing Officer is not fair and impartial. The Temple does not expect the Tahuna to be respected should he appear as a witness in this proceeding and does expect him to possibly be subject to abusive cross-examination without any recourse to assistance from a biased Hearing Officer.

Given the blatant and repeated violations of the Temple's Due Process rights by the Hearing Officer, the Temple also consider this proceeding to be legally meaningless. No decision granting the permit will withstand a legal challenge based on the extensive evidence in the record of bias on the part of the Hearing Officer.

The damage is beyond salvation and must be addressed before all parties waste their time in a hearing that is so obviously tainted.

Dated: October 10, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
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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 Substantive Joinder And Supplement To Petitioners Mauna Kea Anaina Hou Et Al's Renewed Motion To Disqualify Hearing Officer** was served on the following parties by eMail on October 10, 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), [lisa@torkildson.com](mailto:lisa@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 will be served by first class mail on October 11, 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 10, 2016

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