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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 ) **TEMPLE OF LONO RESPONSE TO**  
District Use Permit (CDUP) (HA-3568 for ) **APPLICANT UNIVERSITY OF HAWAII**  
The Thirty Meter Telescope at the Mauna ) **AT HILO'S STATEMENT OF**  
Kea Science Reserve, Kaohe Mauka, ) **POSITION RE SCHEDULING; COS**  
Hamakua District, Island of Hawaii, )  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_ )

**TEMPLE OF LONO RESPONSE TO APPLICANT UNIVERSITY OF HAWAII AT  
HILO'S STATEMENT OF POSITION RE SCHEDULING**

On October 14, the Applicant filed its "Statement of Position re Scheduling."  
(Hereinafter "Scheduling Statement".)

The Temple of Lono herein files its response to the Applicant's filing.

At a pre-hearing conference on October 3, the Hearing Officer set a schedule  
that called for the Hearing Officer to issue minute orders on October 10 for oral  
rulings issued previously.<sup>1</sup>

<sup>1</sup> There is no minute order documenting the October 3 pre-hearing conference. Because the Temple of Lono is one of the many intervenors who cannot afford the thousands of dollars required to purchase a transcript and the Hearing Officer has repeatedly refused to take steps to make the transcript available for review by all parties, the Temple cannot provide citations or excerpts of the record to document the statements made herein about what took place in the pre-hearing.

The Hearing Officer scheduled all parties to file Opening Statements, Witness List, Pre-filed Testimony, Exhibit List, and Exhibits on October 11.

The schedule also called for motions to reconsider the orders scheduled for October 10 to be filed by October 13.

The Hearing Officer did not schedule any time for responses to the motions for reconsideration.

The Hearing Officer scheduled the Contested Case hearing to begin on October 18.

Subsequently, the Hearing Officer, with no notice to the parties, altered the schedule to provide five business days from the date that the minute order issued for a motion to reconsider and five additional business days for a response to such a motion. See e.g. DOC-356 at 4.

In making that change, the Hearing Officer adopted a schedule that called for final rulings on motions after the scheduled beginning of the Contested Case Hearing.

Based on the Hearing Officer having made that mistake, the Applicant is now agreeable to a short and reasonable postponement to the start of the evidentiary hearings in this contested case proceeding to allow for the final disposition (including rulings on any motions for reconsideration) of all substantive motions that have been filed to date.

Scheduling Statement at 2.

As to what motions would be included in determining how long an extension is required, in footnote 1, Applicant takes the following position:

The University notes that the deadline for substantive motions has long since passed, and should be enforced as the parties were given ample time to present their motions. The University, therefore, submits that no further

substantive motions should be permitted; and any efforts to file such motions absent an appropriate showing of cause and grant of leave from the Hearing Officer should be stricken.

Ibid at 2, Note 1.

The Applicant's position on what motions should be considered is clearly absurd.

Under the Applicant's rule, no party could file a motion to recuse the Hearing Officer after the deadline for pre-hearing motions had passed. See e.g. DOC-262, DOC 343, DOC-360, DOC-361. The Hearing Officer would thereby be granted license to engage in any disqualifying behavior she chose without facing accountability. While certainly the Applicant would be pleased to have the Hearing Officer given such license, Due Process requires otherwise.

Under the Applicant's rule, no party could file a summary judgment motion when the absence of any genuine issue of fact regarding a claim that party had become apparent. The summary judgment purpose of preventing the unnecessary expenditure of judicial resources when there is no genuine controversy would be frustrated. See e.g. DOC-263, DOC-264.

Under the Applicant's rule, if the Hearing Officer issued a deficient order after the deadline for filing pre-hearing motions, no party could file a motion to cure such deficiencies. See DOC-286.

Under the Applicant's rule, even motions for extension of time based on substantive actions, such as failing to serve another party with pleadings, would not be allowed. See e.g. DOC-364.

The Temple maintains that such motions are not barred by some arbitrary deadline set by the Hearing Officer. See Temple of Lono: Unresolved Matters, filed October 14, 2016.

As far as whether such motions have to show good cause and have leave of the Hearing Officer to file, the Temple sees no such requirement for the types of motions discussed above.

As to whether such motions should be stricken, motions are not made in footnotes. If the Applicant believes the motions identified in the Temple of Lono: Unresolved Matters pleading filed on October 14, 2016 should be stricken, under the Applicant's rule, the Applicant should file a motion requesting permission to file a motion to strike out of time.

Now that the schedule has unduly burdened and impacted the presentation of evidence on the part of those contesting the permit application, particularly the *pro se* parties, the Applicant is happy to appear magnanimous in supporting a continuance of the hearing to accommodate the Hearing Officer's mistake.

The Intervenor requests for extensions of time when it really counted were ignored. See e.g. DOC-329, DOC-337.

If the Applicant's suggestion for additional time is accepted, the Hearing Officer should provide additional time for the filing of supplemental materials by all parties.

Dated: October 14, 2016

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IN THE MATTER OF ) Case No. BLNR-CC-16-002  
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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 RESPONSE TO APPLICANT UNIVERSITY OF HAWAI'I AT HILO'S STATEMENT OF POSITION RE SCHEDULING** was served on the following parties by eMail on October 14, 2016:

Michael Cain <michael.cain@hawaii.gov>, Kealoha Pisciotta-Keomailani Von Gogh <keomaivg@gmail.com>, Clarence Ching <kahiwaL@cs.com>, Uncle Kalani Flores <ekflores@hawaiiantel.net>, Pua Case <puacase@hawaiiantel.net>, cordylinecolor@gmail.com, kealiikea@yahoo.com, Bianca Isaki <bianca@kahea.org>, Ian Sandison <isandison@carlsmith.com>, tluikwan@carlsmith.com, John P. (Pete) Manaut <jpm@carlsmith.com>, Lindsay N. McAneeley <lmcaneley@carlsmith.com>, T. Shinyama' <RShinyama@wik.com>, douging@wik.com <douging@wik.com>, mehana kihoi <uhiwai@live.com>, Kahookahi Kanuha <kahookahi@gmail.com>, Joseph Camara <kualiic@hotmail.com>, lsa@torkildson.com <lsa@torkildson.com>, njc@torkildson.com <njc@torkildson.com>, leina'ala s <leinaala.mauna@gmail.com>, Maelani Lee <maelanilee@yahoo.com>, Lanny Sinkin <lanny.sinkin@gmail.com>, akulele@yahoo.com <akulele@yahoo.com>, s.tabbada@hawaiiantel.net <s.tabbada@hawaiiantel.net>, tiffniekakalia <tiffniekakalia@gmail.com>, Glen Kila <makakila@gmail.com>, Brannon Kealoha <brannonk@hawaii.edu>, hanahanai@hawaii.rr.com <hanahanai@hawaii.rr.com>, pohaku7@yahoo.com <pohaku7@yahoo.com>, Ivy McIntosh <3popoki@gmail.com>, Kealamakia Jr. <mkealama@yahoo.com>, Patricia Ikeda

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and will be served by first class mail on October 14, 2016 to:

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  
Conservation and Coastal Lands  
1151 Punchbowl, Room 131  
Honolulu, Hawai'i 96813

Dated: October 14, 2016

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Lanny Alan Sinkin