

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) **TEMPLE OF LONO SUPPORT FOR**  
District Use Permit (CDUP) (HA-3568 for ) **PETITIONERS MAUNA KEA ANAINA**  
The Thirty Meter Telescope at the Mauna ) **HOU, ET AL.'S REQUEST FOR**  
Kea Science Reserve, Kaohe Mauka, ) **FURTHER STATUS CONFERENCE**  
Hamakua District, Island of Hawai'i, ) **AND/OR CONSIDERATION OF**  
TMK (3) 4-4-015:009 ) **PROPOSED SCHEDULING, FILED**  
\_\_\_\_\_ ) **SEPTEMBER 8, 2016 [DOC-254]**

**Temple of Lono Support for Petitioners Mauna Kea Anaina Hou, et al.'s  
Request for Further Status Conference and/or Consideration of Proposed  
Scheduling, Filed September 8, 2016 [DOC-254]**

**I. INTRODUCTION**

On September 30, 2016, the Applicant filed its Objection to Petitioners Mauna Kea Anaina Hou, et al.'s Request for Further Status Conference and/or Consideration of Proposed Scheduling, Filed September 8, 2016 [Doc. 254]; Exhibits 1-3; Declaration of Counsel; Certificate of Service (Hereinafter "Objection").

**II. ARGUMENT**

The Applicant objects to the Petitioners Mauna Kea Anaina Hou et al.'s attempt to bring some reasonable order to this relatively chaotic proceeding. The Applicant's filing treats admonitions by the Hearing Officer about the need to be prepared for a hearing in October as sufficient to conclude that the necessary preparations for the hearing have been completed in a timely manner.

The University ignores fundamental problems in the management of this proceeding.

Before any party can know what to say in an opening statement, what witnesses to call, what testimony to prepare, or what exhibits to present, the party needs to know what the issues will be that the Hearing Officer will allow to be heard.

Until the determination of issues is made, there is no reason for the parties to expend time and resources or the time of potential witnesses preparing for a hearing on an issue that may end up being excluded or framed differently than originally presented.

The longer the identification of issues is an unresolved matter, the less likely the hearing will commence in the month that the Hearing Officer initially identified. As of now, the parties have less than two weeks to prepare for the hearing with the issues to be heard still not resolved. Attempting to rush the hearing in order to satisfy the demands of the Thirty Meter Telescope for a new permit will simply add one more violation of due process rights to this proceeding.

While the Hearing Officer has issued an order identifying which issues will be included, DOC-281, and a very limited explanation as to the exclusion of a few issues, *ibid.* at 5, that order did not provide reasoned explanations for the exclusion of numerous other issues. *Ibid.* at 3-4 (submission of issues by parties other than PUEO).<sup>1</sup> No motions for reconsideration can be filed regarding those excluded

---

<sup>1</sup> The Temple of Lono identified 26 issues in 6 different categories. DOC-265, Arguably some of the other issues raised by the Temple are included by the Hearing Officer's order. *Compare* DOC-265 at 2 (The Traditional Hawaiian Faith: History and Current Practice) *with* DOC-281 at 4 ("Is the proposed land use consistent with Article XII, Section 7 of the Hawai'i State Constitution and Ka Pa'akai

issues until such time as the Hearing Officer provides a reasoned explanation for the exclusion.<sup>2</sup>

The question of the issues to be heard is, therefore, still unresolved, leaving the parties without a definitive basis for deciding on opening statements, witnesses, pre-filed testimony, exhibits, etc.<sup>3</sup>

There are also the impacts of unresolved matters may have on either the issues to be heard or the continued pursuit of the proceeding. Almost none of the motions decided orally in the pre-hearing period have been followed by a written order explaining the reasoning for the decision.

For example, the Temple filed a motion for partial summary judgment on June 21, 2016. DOC-78. The Hearing Officer orally denied that motion. More than ninety days later, there is no written order providing the Temple with a basis for a

---

O Ka 'Aina v. Land Use Comm'n State of Hawai'i, 94 Hawai'i 31, 7 P3rd 1068 (2000)?") That arguable inclusion is so vague, however, as to fail to provide notice to the parties of the issue(s) the Hearing Officer considers to be raised by the Constitutional section and the cited case.

Even accepting the issues arguably included, there are 15 other issues raised by the Temple and excluded by the Hearing Officer for which the Hearing Officer provided no explanation. DOC-265, Exhibit A (Categories 1, 2, 5, and 6) Those issues included issues that could be dispositive of the permit application. See e.g. DOC-265, Exhibit A (Character).

<sup>2</sup> The Temple of Lono has a motion pending seeking reasoned explanations for all the exclusion rulings not explained by the Hearing Officer. DOC-286.

<sup>3</sup> The University cites to general admonitions by the Hearing Officer about preparing for the hearing, Objection at 3, and a minute order issued before any pre-hearing matters, other than the determination of parties, had been taken up. Ibid. at 3 *citing* Minute Order 13 [DOC-115]. Suggesting a hearing date before the pre-hearing phase had begun, i.e. before the Hearing Officer had any idea what motions or other matters would arise in that phase, was little more than an aspirational hope expressed by the Hearing Officer. The order even says that the dates are "tentative." Ibid. at 8. Obviously, unresolved matters relevant and material to the proceeding take precedence over an arbitrarily set hearing date.

motion to reconsider. The summary judgments sought by the Temple, DOC-78, are directly relevant to the Temple's argument that this proceeding should be terminated. DOC-264.

Almost all other motions filed are in a similar situation, i.e. oral rulings with no explanatory orders.

All of those matters should be finally resolved before there is a definitive identification of issues for the hearing.

There is also the open issue of whether the Applicant with the burden of proof will put on its case prior to the other parties having to put on their case. The idea that the non-Applicant parties have to provide an opening statement, identification of witnesses, pre-filed testimony, exhibits, etc. before knowing the case being put on by the Applicant is a violation of the non-Applicant parties due process rights. While clearly due process rights are no longer a consideration in this proceeding, see DOC-262, the accumulation of rulings in violation of such rights seems redundant.

The Temple supports the Petitioners Mauna Kea Anaina Hou, et al.'s Request for Further Status Conference and/or Consideration of Proposed Scheduling, Filed September 8, 2016 [DOC-254].

### **III. CONCLUSION**

A reasonable process for this proceeding would have looked something like the following:

-- Determination of Parties

-- Resolution of all pre-hearing matters, including an opportunity for reconsideration motions regarding decisions on all motions filed and decisions on those reconsideration motions.

-- Determination of issues to be heard based on the resolution of all pre-hearing motions and related matters.

-- Scheduling of pre-hearing statements, witnesses, pre-filed testimony, exhibits, etc.

-- Hearing

Unfortunately, the process followed brings all the parties to the brink of a hearing with numerous unresolved matters, including, and not limited to, issuance of reasoned explanations for rulings on motions and other matters raised in the pre-hearing phase, opportunities for motions to reconsider all such rulings, and a definitive resolution of all matters pertaining to the issues to be heard, including all motions for reconsideration.

Forcing the parties to prepare for a hearing under such conditions simply compounds the numerous procedural and substantive errors that now fill the record of this proceeding to date.

Dated: October 1, 2016

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](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 Support for Petitioners Mauna Kea Anaina Hou, et al.'s Request for Further Status Conference and/or Consideration of Proposed Scheduling, Filed September 8, 2016 [DOC-254]** was served on the following parties by eMail on October 1, 2016:

[michael.cain@hawaii.gov](mailto:michael.cain@hawaii.gov), [dlnr.maunakea@hawaii.gov](mailto:dlnr.maunakea@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 1, 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 1, 2016

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