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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)
District Use Permit (CDUP) (HA-3568 for) **TEMPLE OF LONO MOTION TO**
The Thirty Meter Telescope at the Mauna) **STRIKE TIO'S OPPOSITION TO**
Kea Science Reserve, Kaohe Mauka) **TO TEMPLE OF LONO MOTION**
Hamakua District, Island of Hawai'i) **FOR SUMMARY JUDGMENT**
TMK (3) 4-4-015:009) **(DESECRATION) FILED**
) **SEPTEMBER 17, 2016 [DOC-264];**
) **MEMORANDUM; COS**
_____)

**TEMPLE OF LONO MOTION TO STRIKE TIO'S OPPOSITION TO TEMPLE OF
LONO'S MOTION FOR SUMMARY JUDGMENT (DESECRATION) FILED
SEPTEMBER 17, 2016 [DOC-264]**

On September 17, 2016, the Temple of Lono filed its Motion for Summary Judgment (Desecration). DOC-264.

On February 22, 2017, the University of Hawai'i at Hilo filed its opposition to the Temple's motion. DOC-473.

On February 22, 2017, the Temple of Lono filed its motion to strike the UHH opposition. DOC-474.

On February 28, TIO filed its Joinder to the University of Hawai'i at Hilo's Opposition to Temple of Lono's Motion for Summary Judgment (Desecration), Filed September 17, 2016. DOC-484.

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Office of Conservation and Coastal Lands
2017 Mar 04 9:15 am
Department of Land and Natural Resources
State of Hawaii

The Temple herein moves to strike TIO's opposition.

DATED: Kurtistown, Hawai'i, March 4, 2017

_____/s/_____
Lanny Alan Sinkin
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) **MEMORANDUM IN SUPPORT OF**
District Use Permit (CDUP) (HA-3568 for) **TEMPLE OF LONO MOTION TO**
The Thirty Meter Telescope at the Mauna) **STRIKE TIO'S OPPOSITION TO**
Kea Science Reserve, Kaohe Mauka) **TO TEMPLE OF LONO MOTION**
Hamakua District, Island of Hawai'i) **FOR SUMMARY JUDGMENT**
TMK (3) 4-4-015:009) **(DESECRATION) FILED**
) **SEPTEMBER 17, 2016 [DOC-264];**
) **MEMORANDUM; COS**
_____)

**MEMORANDUM IN SUPPORT OF TEMPLE OF LONO MOTION TO STRIKE TIO'S
OPPOSITION TO TEMPLE OF LONO'S MOTION FOR SUMMARY JUDGMENT
(DESECRATION) FILED SEPTEMBER 17, 2016**

I. INTRODUCTION

On September 17, 2016, the Temple of Lono filed its Motion for Summary Judgment (Desecration). DOC-264.

On February 22, 2017, the University of Hawai'i at Hilo filed its opposition to the Temple's motion. DOC-473.

On February 22, 2017, the Temple of Lono filed its motion to strike the UHH opposition. DOC-474.

On February 28, TIO filed its Joinder to the University of Hawai'i at Hilo's Opposition to Temple of Lono's Motion for Summary Judgment (Desecration), Filed September 17, 2016. DOC-484.

The Temple moves to strike TIO's opposition and offers this memorandum in support of said motion.

II. ARGUMENT

A. The TIO opposition is filed in violation of the administrative rules.

Hawaii Administrative Rules ¶13-1-34 Motions states:

(a) ... The presiding officer shall set the time for filing all motions **and opposing memorandum.**"

(emphasis added)

At no time since the filing of the Temple's motion for summary judgment, DOC-264, has the presiding officer ever set a time for the filing of a memorandum in opposition to that motion.

With no time set for the filing of an opposition, TIO's opposition is filed without proper leave and, therefore, premature. The opposition should be struck.¹

B. Alternatively, the TIO delay in filing its opposition is tantamount to a default

If there is somehow the presumption that an opposition could be filed without permission of the hearing officer, then surely waiting more than five months to file such an opposition is tantamount to defaulting. Hawaii

Administrative Rules ¶13-1-34 Motions. states:

(c) Failure to serve or file ... [a] **memorandum in opposition to a motion** ... shall be deemed a **waiver of objection** to the granting or denial of the motion.

(emphasis added)

¹ The Temple notes that the TIO opposition was filed six days after the Temple filed its motion to strike the University's opposition. TIO was thus on notice of the Temple's argument that the University opposition was improperly filed without leave of the Hearing Officer. The same argument would obviously apply to the TIO joinder. Yet TIO made no attempt to justify that violation of the rules when filing the TIO opposition.

III. CONCLUSION

TIO's opposition to the Temple's motion for summary judgment on the desecration issue is filed in violation of the administrative rules and long after any reasonable time for such a pleading to be filed. The opposition should be struck.

DATED: Kurtistown, Hawai'i, March 4, 2017.

_____/s/_____
Lanny Alan Sinkin
Lay representative for Temple of Lon

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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)
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 TO STRIKE TIO'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT (DESECRATION), FILED SEPTEMBER 7, 2016 [DOC-264]** was served on the following parties by email on March 4, 2017:

Michael Cain <michael.cain@hawaii.gov>, Office of Conservation & Coastal Lands <dlnr.maunakea@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>, cordylinicolor@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 <lmcaaneeley@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

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and by first class mail on March 4, 2017 to:

1. Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

2. Harry Fergerstrom
P.O. Box 951
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3. Michael Cain, Custodian of Records
Conservation and Coastal Lands
1151 Punchbowl, Room 131
Honolulu, Hawai'i 96813

Dated: March 4, 2017

_____/s/_____
Lanny Alan Sinkin