

Lanny Alan Sinkin
P. O. Box 944
Hilo, Hawai'i 96721
(808) 936-4428
lanny.sinkin@gmail.com
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 Application (CDUA) (HA-) **TEMPLE OF LONO MOTION FOR**
3568) The Thirty Meter Telescope at the) **PROTECTIVE ORDER;**
Mauna Kea Science Reserve, Kaohe Mauka,) **MEMORANDUM IN SUPPORT; COS**
Hamakua District, Island of Hawai'i,)
TMK (3) 4-4-015:009)
_____)

TEMPLE OF LONO MOTION FOR PROTECTIVE ORDER

NOW COMES INTERVENER TEMPLE OF LONO and moves the Hearing Officer to grant a protective order removing any obligation on the part of the parties to respond to any objections filed by other parties to testimony and exhibits being moved into evidence.

Under the schedule set orally by the Hearing Officer, objections to motions seeking admission of testimony and exhibits into evidence were due on March 16.

Under the same schedule, the Hearing Officer was to issue a minute order on March 23 identifying which exhibits would be accepted and which would not.¹

Under that schedule, there was no time allotted for responding to objections.

¹ On March 23, 2017, as of the normal deadline of 4:30 p.m. for filings in this proceeding, the Temple has not received any such minute order. Given the extraordinary circumstances created by the UHH/TMT/TIO filing of innumerable objections, the absence of a minute order deciding all such objections is not surprising.

As the Hearing Officer is aware, see Mauna Kea Anaina Hou Motion Requesting Time to Respond to Exhibit Objections and Related Matters filed March 21, 2017, UHH and TMT/TIO unexpectedly filed hundreds, if not thousands, of objections to testimony and exhibits other parties sought to move into evidence.

As the Hearing Officer did not provide time for filing responses to objections, there is no opportunity to respond to these objections.

At the same time, the objections have been filed.

Given the situation, the Temple moves for a protective order clarifying that there is no obligation on the part of parties whose testimony and exhibits have been subject to objections to file responses at this time.

The Temple provides support for this motion in the accompanying memorandum.

DATED: March 24, 2017, Kurtistown, Hawai'i

_____/s/_____
Lanny Alan Sinkin
Lay Representative for Temple of Lono

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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 MEMORANDUM**
District Use Application (CDUA) (HA-) **IN SUPPORT OF MOTION FOR**
3568) The Thirty Meter Telescope at the) **PROTECTIVE ORDER; COS**
Mauna Kea Science Reserve, Kaohe Mauka,))
Hamakua District, Island of Hawai'i,))
TMK (3) 4-4-015:009))
_____)

**TEMPLE OF LONO MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

I. INTRODUCTION

In orally setting the schedule for motions moving testimony and exhibits into evidence, the Hearing Officer failed to include time for responses to objections to be filed.

Instead, the Hearing Officer set March 16 as the deadline for filing objections and March 23 as the date for issuing a minute order on which exhibits would be admitted and which would not.

On March 16, UHH and TMT/TIO filed innumerable objections.

On March 23, the Hearing Officer did not issue a minute order addressing exhibits.

In the absence of any guidance from the Hearing Officer, there is no ruling in place to address whether and when all parties are to respond to the hundreds of objections filed by UHH/TMT/TIO.

While there is no time set aside for filing responses to objections, parties are already filing such responses.

The Temple seeks this protective order to essentially stay any implicit requirement that parties file responses to objections at this time.

II. ARGUMENT

A. The Hearing Officer did not provide time for responding to objections.

The problems created by the Hearing Officer scheduling the filing of motions to move testimony and exhibits into evidence and objections to such motions without providing a time for responses to those objections is discussed at length in the Mauna Kea Anaina Hou Motion Requesting Time to Respond to Exhibit Objections and Related Matters, DOC-522 and related joinders. DOCs-524, 526, 527, 528, 530, 532, 535, 538, 539, 540, and 541.

This motion addresses solely the issue of whether any responses to objections need to be filed at this time.

B. Parties are already filing responses without any guidance from the Hearing Officer.

The Hearing Officer did not issue a minute order on March 23 addressing the admission of exhibits and particularly the absence of time to respond to objections.

In the absence of such an order, the parties are left to determine for themselves whether to respond to objections and, if so, under what timetable.

Parties are already responding. See DOCs-520, 521, 525, 532, 533, and 534.

C. Until the Hearing Officer holds a hearing and decides how to address the voluminous objections filed, the parties sponsoring exhibits facing objections should not have to respond.

The unexpected UHH/TMT/TIO filing of voluminous objections has created a situation in which parties find themselves faced with an unresolved question as to whether and when to respond to those objections.

The appropriate immediate response to this situation is for the Hearing Officer to explicitly order that no responses will be required until the entire matter of how these voluminous objections will be addressed is resolved. The parties should not be forced to respond in order to protect themselves from any potential default argument the objectors might make.

The Temple, therefore, seeks a protective order from the Hearing Officer to clarify the immediate situation.

III. CONCLUSION

No party facing objections in the absence of any schedule for filing responses should have to be concerned with whether or when to file such responses until those issues are resolved. In the current absence of any such resolution, the Hearing Officer should explicitly order that there is no requirement at this time to file responses to objections.

DATED: March 24, 2017

_____/s/_____
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Lay Representative for Temple of Lono

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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 FOR PROTECTIVE ORDER** and **MEMORANDUM IN SUPPORT OF MOTION** was served on the following parties by email on March 24, 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@hawaiiintel.net>, Pua Case <puacase@hawaiiintel.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 <lmcaneeley@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@hawaiiintel.net <s.tabbada@hawaiiintel.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

<peheakeanila@gmail.com>, Yuklin Aluli <yuklin@kailualaw.com>, Dexter Kaiama <cdexk@hotmail.com>

and by first class mail on March 24, 2017 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: March 24, 2017

_____/s/_____
Lanny Alan Sinkin