

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 HAWAI'I

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 TO**
3568) The Thirty Meter Telescope at the) **RECONSIDER MINUTE ORDER**
Mauna Kea Science Reserve, Kaohe Mauka,) **NO. 46; MEMORANDUM IN SUPPORT;**
Hamakua District, Island of Hawai'i,) **COS**
TMK (3) 4-4-015:009)
_____)

**TEMPLE OF LONO MOTION TO RECONSIDER
MINUTE ORDER NO. 46**

The Temple herein moves for reconsideration of Minute Order No. 46.

The Temple offers the accompanying memorandum in support of the
Temple's motion.

DATED: May 4, 2017

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

Received
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
2017 May 4 11:22 am

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 HAWAI'I

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation)
District Use Application (CDUA) (HA-) **TEMPLE OF LONO MEMORANDUM**
3568) The Thirty Meter Telescope at the) **IN SUPPORT OF MOTION TO**
Mauna Kea Science Reserve, Kaohe Mauka,) **RECONSIDER MINUTE ORDER NO. 46**
Hamakua District, Island of Hawai'i,)
TMK (3) 4-4-015:009)
_____)

**TEMPLE OF LONO MEMORANDUM IN SUPPORT OF
MOTION TO RECONSIDER MINUTE ORDER NO. 46**

I. INTRODUCTION

On September 17, 2016, the Temple of Lono filed its Motion to Recuse the Hearing Officer in this proceeding. DOC-262.

On May 2, 2017, the Hearing Officer took up the Temple's motion for the first time. DOC-595 [Minute Order No. 46 (Related to Temple of Lono Motion to Recuse Hearing Officer)] ("MO 46").

The Hearing Officer also took up the Temple's motions to strike the oppositions to the Temple's motion to recuse. DOCs-436, 536, 544.

The Hearing Officer denied both the Temple's motion and the Temple's motions to strike.

The Temple herein moves for reconsideration of the Hearing Officer's rulings.

II. ARGUMENT

A. The Hearing Officer is inappropriately taking away the Temple's time for preparing findings of fact and conclusions of law by issuing an untimely order with a short time for filing a motion to reconsider

The Hearing Officer has apparently decided to go back to a motion filed more than seven months ago and never addressed. MO 46.

In doing so, the Hearing Officer is burdening the Temple with filing a motion for reconsideration while, at the same time, preparing findings of fact and conclusions of law, currently due on May 30, 2017. Minute Order 43.

The Hearing Officer also required such a motion for reconsideration to be filed no later than 5 business days after the filing of the Minute Order. MO 46 at 5.

The Temple is, therefore, forced to choose between preparing this motion for reconsideration or continuing to work on the findings and conclusions.

Imposing that burden constitutes harassment and is consistent with the Hearing Officer's pattern of bias against the Temple and in favor of the Applicant.¹

The Temple chose to respond to the latest minute order because that order so clearly highlights the problems created by the conduct of this proceeding.

B. The Hearing Officer cannot possibly be objective in deciding whether she should have recused herself more than seven months ago.

The Hearing Officer's consistent pattern of not scheduling motions for hearing, see e.g. DOC-573 at 5, not issuing written orders to support oral rulings, see e.g. DOC-458 (a proposed order never issued), and not providing reasoned explanations for rulings thereby foreclosing the filing of motions for

¹ There are numerous other motions filed by the Temple and never responded to by the Hearing Officer. See e.g. DOC-573 at 5. Further rulings on those motions will only compound the harassment.

reconsideration, see e.g. DOC-286 (Temple of Lono motion for reasoned explanations and extension of time), prejudiced the Temple's ability to make its case and creating a dysfunctional proceeding that has now culminated in a ruling that is indefensible.

The Hearing Officer cannot possibly be objective about a motion to recuse filed last September. Since the filing of that motion, there has been an extensive proceeding, including 44 days of hearings. For the Hearing Officer to now rule that she should have disqualified herself more than seven months ago would irrevocably taint the proceeding since that time and be a basis for vacating this proceeding.

The denial of the Temple's motion was pre-ordained when the Hearing Officer chose to wait seven months before ruling while the proceeding continued.²

C. The Hearing Officer misrepresents the Temple's motion to obscure the primary basis that the Temple had for seeking recusal.

The Hearing Officer states that the Temple's motion "purports to recuse Hearing Officer on the basis of alleged bias demonstrated in her rulings related to the [Motion for Partial Summary Judgment]." MO 46 at 4.

The motion itself primarily argued that the refusal of the Hearing Officer to allow the Temple to be heard on the disqualifying nature of the Applicant's attack on the Temple was the basis for seeking recusal, not rulings associated with the Motion for Partial Summary Judgment. DOC-262 at 2-8.

Not allowing the Temple to be heard on the issue of whether the attack

² The fact that the Hearing Officer did take up the Temple's motion confirms the Temple's argument that Minute Order 39 deliberately misrepresented the state of the record on this motion. DOC-409 (Temple of Lono motion to vacate Minute Order No. 39 or, alternatively to partially reconsider Minute Order No. 39) at 10-11. The Board never ruled on the Temple's motion.

disqualified the Applicant from receiving the permit sought remains a serious due process violation never addressed by the Hearing Officer.

D. The Hearing Officer mistakenly characterizes the Temple's motion as "filed outside of any established process set out in rule, law, or order."

The Hearing Officer finds that the Temple's motion to recuse was "filed outside of any established process set out in rule, law, or order" MO 46 at 4.

The Hearing Officer mistakenly rules that a motion for recusal can only be filed within the time set by the Hearing Officer for pre-hearing motions or during the hearing. If there is a gap in time between when the schedule for pre-hearing motions expires and when the hearing begins, the Hearing Officer claims no party can challenge the Hearing Officer's right to continue as Hearing Officer.

There is no legal support for a prohibition on motions to recuse during the period between the end of the pre-trial motions schedule and the beginning of the hearing.

There are, however, compelling legal and policy reasons for not allowing such a prohibition. If there is conduct that warrants recusal, the need to address that conduct is immediate. Otherwise, the challenged Hearing Officer would be free to continue to preside over the proceeding after the Hearing Officer's impartiality was called into question. The entire proceeding would then be at risk of being tainted. See Section B supra.

C. CONCLUSION

The Hearing Officer allowed a motion to recuse to go without attention for more than seven months. That motion can no longer be objectively considered by

the Hearing Officer because granting the motion would be the equivalent of declaring a mistrial.

The Hearing Officer should vacate Minute Order 46 as inappropriately ruled upon. A refusal to do so would simply confirm the need for recusal originally requested.

DATED: May 4, 2017 Kurtistown, Hawai'i

_____/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
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 MOTION FOR RECONSIDERATION OF MINUTE ORDER NO. 46** was served on the following parties by email on May 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@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 May 4, 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: May 4, 2017

_____/s/_____
Lanny Alan Sinkin