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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)
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. 47; MEMORANDUM IN**
Hamakua District, Island of Hawai'i,) **SUPPORT; COS**
TMK (3) 4-4-015:009)
_____)

TEMPLE OF LONO MOTION TO RECONSIDER MINUTE ORDER NO. 47

On May 4, 2017, the Hearing Officer filed Minute Order No. 47 (Related to Temple of Lono Motion for Summary Judgment (Disqualification) (Doc. 263)). ("MO 47)."

The Temple of Lono herein files its motion to reconsider Minute Order No. 47.

DATED: May 5, 2017

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

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Department of Land and Natural Resources
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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 FOR**
Mauna Kea Science Reserve, Kaohe Mauka,) **RECONSIDERATION OF MINUTE**
Hamakua District, Island of Hawai'i,) **ORDER NO. 47**
TMK (3) 4-4-015:009)
_____)

MEMORANDUM IN SUPPORT OF TEMPLE OF LONO

MOTION TO RECONSIDER MINUTE ORDER NO. 47

I. INTRODUCTION

On May 4, 2017, the Hearing Officer filed Minute Order 47 (Related to Temple of Lono Motion for Summary Judgment (Disqualification) (DOC-263). (“MO 47”).

This ruling addresses a motion filed more than seven months ago. DOC-263 filed September 17, 2016

Like the earlier untimely ruling on the Temple’s motion to recuse, see DOC-610, it is impossible for the Hearing Officer to rule objectively on the Temple’s motion seeking disqualification of the Applicant.

Entering an order in the midst of the time set for preparing findings of fact and conclusions of law with a short time frame for reconsideration, MO 47 at 5, is further harassment of the Temple.

The ruling should be reconsidered and withdrawn.

II. ARGUMENT

A. The Hearing Officer cannot possibly be objective in deciding whether the Applicant disqualified itself 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 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 yet another – see DOC-610 – ruling that is indefensible. MO 47.

The Hearing Officer cannot possibly be objective about a motion to disqualify the Applicant 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 the Applicant more than seven months ago would be to rule that the extensive proceeding was a complete waste of time and money, for which the Hearing Officer would be responsible.

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.

B. On the merits, the ruling fails to address the fact not in dispute.

The Hearing Officer ruled that

the Temple of Lono has failed to show that there is no genuine issue of material fact in dispute.

MO 47 at 5.

The fact not in dispute is that the Applicant filed DOC-135, which addresses the character of the Temple of Lono. DOC-135 at 14-15. This filing is signed by the attorney for the Applicant. *Ibid.* at 16. That signature attests for the truth of the filing. Cf. HRCF Rule 11. As such, the document is a statement of position on the part of the Applicant.

The question of whether there is a genuine issue of fact is resolved by answering the question: Did the Applicant file DOC-135? If the answer to that factual question is “yes,” then there is no genuine issue of fact and the inquiry moves to consider whether the law entitles the movant to summary judgment.

C. On the merits, the ruling is without legal support.

The next question is a question of law: As a matter of law, did the filing at issue disqualify the Applicant from receiving a permit from the agency?

The Hearing Officer notes the legal authority cited by the Temple for the proposition that the character of an applicant matters. MO 47 at 2 *citing N.M.*

Ranchers Ass’n v. ICC, 702 F.2d 227, 232-233 (D.C. Cir. 1983)

The Hearing Officer then dismisses that authority with the statement that

[t]he *ICC* case and this contested case hearing are incomparable and there is no other law cited by the Temple of Lono to support its motion for summary judgment.

MO 47 at 5.

The Hearing Officer offered no reasoned explanation as to why the cited case is “incomparable” nor any other reason to conclude that the character of the applicant is not an appropriate inquiry for the agency considering the application. The Hearing Officer

certainly cites no law to support such a position.

The Applicant opened the character issue with its attack on the character of the Temple. Now the Applicant with the assistance of the Hearing Officer is attempting to close that door and avoid accountability for its actions.

D. The ruling on this motion confirms that the record is incomplete.

The Hearing Officer is issuing one order after another confirming that the schedule for findings and conclusions set by the Hearing Officer was premature because the record is incomplete. See DOC-559 (Temple of Lono Motion for Reconsideration of Minute Order No. 43.) In this case, the granting of the motion when filed would have precluded the need to develop any further record. Instead, while the Hearing Officer ignored the pleading, the proceeding continued.

E. The continual issuing of minute orders while the time is running out to prepare findings of fact and conclusions of law is prejudicial.

While the Temple is preparing findings of fact and conclusions of law due on May 31, 2017, Minute Order 43, the Temple is also having to review new minute orders being issued on matters raised long ago and file motions for reconsideration where necessary.

This double burden placed on the Temple by the Hearing Officer is still further confirmation of the Hearing Officer's bias against the Temple and in favor of the Applicant.

III. CONCLUSION

The Hearing Officer is apparently trying to clean up the record of this proceeding and move towards completing the record by addressing motions and related matters initially ignored.

In doing so, the Hearing Officer is issuing orders on matters that are moot. See e.g. DOC-590 [Minute Order No. 45: Order granting in part / denying in part petitioners Mauna Kea Anaina Hou, et al.'s request for further status conference and/or consideration of proposed scheduling (Doc. 254)]. This minute order ruled on matters related to the scheduling of the hearing phase when the hearing phase is already completed.

The Hearing Officer is also issuing orders on matters about which she cannot possibly be objective. See supra. at page 2; see also DOC-595 [Minute Order No. 46: Order related to Temple of Lono motion to recuse Hearing Officer (Doc. Nos. 262, 434, 436, 536, 544)]; DOC-610 (Temple of Lono motion to reconsider Minute Order No. 46) at 2-3.

These rulings by the Hearing Officer confirm the need for an outside intervention in this proceeding. See DOC-573.

DATED: May 5, 2017

_____/s/_____
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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)
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. 47** was served on the following parties by email on May 5, 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

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and by first class mail on May 5, 2017 to:

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3. Michael Cain, Custodian of Records
Conservation and Coastal Lands
1151 Punchbowl, Room 131
Honolulu, Hawai'i 96813

Dated: May 5, 2017

_____/s/_____
Lanny Alan Sinkin