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| 484 | 2-28-17 | TMT International Observatory, LLC's Joinder to University of Hawai'i at Hilo's Opposition to Temple of Lono's Motion for Summary Judgment (Desecration), Filed September 17, 2016 [Doc 264], Filed February 22, 2017 [Doc 473] | TMT International Observatory, LLC |
| 490 | 3-4-17* | Temple of Lono Motion to Strike TIO's Opposition to Temple of Lono Motion for Summary Judgment (Desecration), filed September 17, 2016 [DOC-264] *Date received by Office of Conservation and Coastal Lands. Listed in Document Library Index as 03-March-17 | Temple of Lono |
| 536 | 3/22/17 | Applicant University of Hawaii at Hilo's Combined Opposition to the Temple of Lono's Motion to Strike University of Hawaii at Hilo's Opposition to Temple of Lono's Motion for Summary Judgment (Disqualification) [Doc. 435], Motion to Strike University of Hawaii at Hilo's Opposition to Temple of Lono's Motion to Recuse Hearing Officer [Doc. 436], and Motion to Strike University of Hawaii at Hilo's Opposition to Temple of Lono's Motion for Summary Judgment (Desecration) [Doc. 474]; | University of Hawai'i at Hilo |
| 544 | 3/23/17 | TMT International Observatory, LLC's (1) Joinder in Applicant University of Hawaii at Hilo's Combined Opposition to the Temple of Lono's Motion to Strike University of Hawaii at Hilo's Opposition to Temple of Lono's Motion for Summary Judgment (Disqualification) [Doc. 435], Motion to Strike University of Hawaii at Hilo's Opposition to Temple of Lono's Motion to Recuse Hearing Officer [Doc. 436], and Motion to Strike University of Hawaii at Hilo's Opposition to Temple of Lono's Motion for Summary Judgment (Desecration) [Doc. 474]; and (2) Memorandum in Opposition to Temple of Lono's Motion to Strike TIO's Opposition to to [sic] Temple of Lono Motion for Summary Judgment (Desecration) Filed September 17, 2016 [Doc 490] | TMT International Observatory, LLC |

The Temple of Lono moves this Hearing Officer to “grant a summary judgment on the Temple’s claim that the construction proposed in the above-captioned proceeding would

constitute desecration under State law and, therefore, the permit for such construction cannot be granted.” Doc. 264 at page 1. UHH opposes the Motion as being (1) untimely and in violation of the pre-hearing motions deadline set out in Minute Order 13 (Doc. No. 115); (2) outside the jurisdiction of the contested case hearing; (3) insufficient insofar as the Temple of Lono has failed to carry its burden for summary judgment. Doc. 473 at pp. 2-9. TIO joins UHH on all grounds and adds that:

Hawaii law is very clear that an administrative agency only has those powers expressly granted to it by statute. *Morgan v. Planning Dep't*, 104 Hawai'i 173, 184, 86 P.3d 982, 993 (2004). This contested case hearing is not the proper forum to adjudicate alleged violations of the Hawai'i Penal Code, including anticipatory violations of HRS § 711-1107 as alleged in the Motion, because no statute has granted the BLNR with the power to do so. Indeed, as explained below, neither the Hawai'i Penal Code nor the enabling statutes for the BLNR provide the BLNR with jurisdiction over criminal offenses.

Doc. 484 at p. 2

The Temple of Lono moves to strike both opposition motions by UHH and TIO, respectively, on the basis that they are untimely. The Temple of Lono charges that the Hearing Officer has not set a time for filing oppositions and therefore, without such deadlines, the oppositions are filed without proper leave and premature. Doc. 474 at page 2. Alternatively, the Temple of Lono asserts that the oppositions filed months after the Motion are “tantamount to defaulting.” Doc. 474 at page 2. According to the Temple of Lono, the oppositions represent “further proof of the systematic denial of the Temple’s due process rights.” Doc. 474 at page 2.

In an effort to engage an orderly process for this contested case hearing, Minute Order 13, filed on July 21, 2016, set deadlines for filing a number of documents that are typically submitted in contested matters, including pre-hearing motions. Minute Order 13, at pp. 6-7.

This Motion, filed on September 17, 2015, is a dispositive pre-hearing motion that clearly falls outside the filing deadline of July 18, 2016 set by the Minute Order.

There are no bases for the motions to strike the oppositions that were filed in response to the untimely Motion. Oppositions are part of the adversarial process used to elucidate contrary positions and legal arguments, enabling a tribunal to consider all aspects of a motion. By filing the Motion, Temple of Lono opened the door for oppositions.

Assuming *arguendo* that the Motion was timely, it fails on at least two other grounds. One, this tribunal lacks the authority to provide the relief the Temple of Lono seeks because this contested case hearing is an improper venue to adjudicate criminal law violations. Two, the Temple of Lono has failed to carry its burden that it is entitled to judgment as a matter of law and/or any material facts supporting the Motion are undisputed.

Based upon the Motions, all related submissions from counsels and/or parties, all applicable law, and the entire record having been considered by the Hearing Officer,

IT IS HEREBY ORDERED that the Motions are DENIED.

Motion to Reconsider. A party, who believes it appropriate, may file a motion to reconsider using the procedure set out herein. Any Motion for Reconsideration shall not be used to reargue the motion or set out positions of a purely repetitious nature or to present factual or legal grounds that could or should have been presented at the original hearing. AMFAC, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114 (1992).

The deadline for submission of any **motion** to reconsider this minute order is no later than **5 business days** after the date this Minute Order is filed in the Documents Library. Any **responses to motions to reconsider**, shall be submitted no later than **10 business days** after this

order is filed in the Documents Library; essentially 5 business days after the deadline for motions to reconsider.

Any Motion to Reconsider shall be considered a non-hearing motion unless otherwise designated by the Hearing Officer.

DATED: Honolulu, Hawai`i, May 27, 2017.



Judge Riki May Amano (Ret.)
Hearing Officer

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

Contested Case Hearing Re Conservation
District Use Application (CDUA) HA-3568
for the Thirty Meter Telescope at the Mauna
Kea Science Reserve, Ka'ohē Mauka,
Hāmākua, Hawai'i, TMK (3) 4-4-015:009

BLNR Contested Case HA-16-02
Document title: **Minute Order No. 53**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by email (when indicated) on May 30, 2017 and by regular mail on May 31, 2017:

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