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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 FOR**  
3568) The Thirty Meter Telescope at the ) **RECONSIDERATION OF MINUTE**  
Mauna Kea Science Reserve, Kaohe Mauka, ) **ORDER 53; COS**  
Hamakua District, Island of Hawai'i, )  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_ )

**TEMPLE OF LONO MOTION FOR RECONSIDERATION OF MINUTE ORDER 53**

NOW COMES the Temple of Lono and moves the Hearing Officer to  
reconsider Minute Order 53.

A memorandum in support of said motion accompanies this motion.

DATED: June 1, 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 June 1 6:50 am

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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 MEMORANDUM**  
3568) The Thirty Meter Telescope at the ) **IN SUPPORT OF MOTION TO**  
Mauna Kea Science Reserve, Kahohe Mauka,) **RECONSIDER MINUTE ORDER 53**  
Hamakua District, Island of Hawai'i, )  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_)

**TEMPLE OF LONO MEMORANDUM IN SUPPORT  
OF MOTION TO RECONSIDER MINUTE ORDER 53**

**I. INTRODUCTION**

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

Subsequently, the Temple filed motions to strike oppositions filed by the Applicant and by TIO. DOCs-474, 490.

On May 27, 2017, the Hearing Officer filed Minute Order 53 denying the Temple's motions ("MO 53"). DOC-654.

The Temple offers this memorandum in support of the Temple's motion for reconsideration of Minute Order 53.

## II. ARGUMENT

### **A. Having delayed a ruling for nine months, the Hearing Officer can no longer be objective or impartial in addressing the motion.**

Having delayed a ruling on the Temple's motion for nine months, the Hearing Officer created a situation where the Hearing Officer has two options: (1) deny the Temple's motion or (2) grant the Temple's motion and invalidate the entire proceeding.

The Hearing Officer agrees that the Temple's motion is "a dispositive pre-hearing motion ...." MO 53 at 4. Had the Hearing Officer granted the motion when the motion was filed, the application at issue would have been dismissed and any further proceedings terminated.

For the Hearing Officer to grant the motion at this point would mean the extensive litigation over the past nine months was a waste of time and money that imposed significant hardship on the parties seeking to participate. The Hearing Officer would be solely responsible for that outcome.

In such a circumstance, the Hearing Officer cannot be objective or impartial. Granting the Temple motion would seriously harm the Hearing Officer's reputation. Denying the motion would protect the Hearing Officer's reputation.

The Hearing Officer's protection comes at the price of the Temple's due process right to have decisions in the contested case made objectively, impartially, and in a timely manner.

This is the third minute order ruled upon after a substantial delay that created the same inappropriate pressure to deny a dispositive motion filed by the

Temple. See Minute Order 46, DO- 595 and Minute Order 47, DOC-609. See also DOCs-610 and 619.

Similarly, a denial of the Temple's motion to reconsider Minute Order 53 would simply be further evidence of the Hearing Officer's refusal to acknowledge the impropriety of having entered such a late ruling in the first place.

**B. The Hearing Officer did not find the motion to be untimely when the motion was filed.**

While now finding that the Temple's motion "clearly falls outside the filing deadline" for prehearing motions, MO 53 at 4, the Hearing Officer made no such ruling at the time.

Instead, the Hearing Officer simply ignored the Temple's motion and did not address the motion in any way until nine months after it was filed.

Had the Hearing Officer taken up that motion and ruled it to be untimely, the Temple would have had the option to re-file the motion when the hearing began.

Instead, the Temple was left in the limbo of having its motion ignored, a circumstance repeated often enough to form a pattern of discrimination against the Temple. See DOC-651 at FoF 23-199.<sup>1</sup>

Finding the motion to be untimely at this point would also give the appearance of the Hearing Officer acting to protect the Hearing Officer's reputation.

**C. The Temple did not argue that other parties could not oppose the Temple's motion.**

The Hearing Officer mischaracterizes the Temple as arguing that the

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<sup>1</sup> After waiting for six months for a ruling, the Temple filed a similar motion directly with the BLNR on March 19, 2017. DOC-516. Apparently taking their cue from the Hearing Officer or the same attorneys as those advising the Hearing Officer, the BLNR also ignored the Temple's motion.

Applicant and TIO did not have the right to file an opposition to the Temple's 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 opposition.

MO 53 at 4.

The Temple's motion clearly argues that the filing of oppositions prior to the Hearing Officer setting a schedule for such filings violated HAR § 13-1-34. DOC-474 at 1-2. The Temple obviously is not arguing that the filing of oppositions was barred altogether.

**C. The Hearing Officer is competent to recognize illegality when illegality is present.**

The Hearing Officer denies that the Hearing Officer has

authority to provide the relief the Temple of Lono seeks because this contested case hearing is an improper venue to adjudicate criminal law violations.

MO 53 at 4.

Despite every attempt by the Applicant and the Hearing Officer to mischaracterize what the Temple motion seeks, the Temple is **not** seeking to have a criminal violation **adjudicated** in this proceeding. That formulation of the issue presumes that some action has taken place.

The Temple is arguing that the application in this proceeding is seeking a permit to violate the law, that the Hearing Officer can make a determination on that issue, and that the Hearing Officer can find as a matter of law that the application must be denied or dismissed **before** any action can take place.

If someone filed an application with the BLNR seeking a permit to excavate a burial area and remove artifacts found there, the BLNR would have no problem finding that the request was seeking a permit to violate the law. In fact, the BLNR would be required to deny the permit or be found complicit in a conspiracy to break the law.

The pretense that the Hearing Officer cannot recognize and respond to an application to break the law is ludicrous.

The Hearing Officer's insistence on misrepresenting what the Temple motion seeks appears to be part of the pattern suggested above in which the Hearing Officer is acting to protect the Hearing Officer's reputation from an obvious failure to rule in a timely fashion.

An honest addressing of the actual issue raised by the Temple would call upon the Hearing Officer to decide whether the application is seeking a permit to violate the law on desecration. The Hearing Officer scrupulously avoids addressing that question.

### **III. CONCLUSION**

Having failed to rule on the Temple's motion in a timely fashion, the Hearing Officer cannot now deny the motion without the appearance of impropriety.

Minute Order 53 should be withdrawn.

DATED: June 1, 2017

\_\_\_\_\_/s/\_\_\_\_\_  
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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 RECONSIDERATION OF MINUTE ORDER NO. 53** was served on the following parties by email on June 1, 2017.

Michael Cain <[michael.cain@hawaii.gov](mailto:michael.cain@hawaii.gov)>, Office of Conservation & Coastal Lands <[dlnr.maunakea@hawaii.gov](mailto:dlnr.maunakea@hawaii.gov)>, Kealoha Pisciotta-Keomailani Von Gogh <[keomaivg@gmail.com](mailto:keomaivg@gmail.com)>, Clarence Ching <[kahiwaL@cs.com](mailto:kahiwaL@cs.com)>, Uncle Kalani Flores <[ekflores@hawaiiintel.net](mailto:ekflores@hawaiiintel.net)>, Pua Case <[puacase@hawaiiintel.net](mailto:puacase@hawaiiintel.net)>, cordylinicolor@gmail.com, kealiikea@yahoo.com, Bianca Isaki <[bianca@kahea.org](mailto:bianca@kahea.org)>, Ian Sandison <[isandison@carlsmith.com](mailto:isandison@carlsmith.com)>, tluikwan@carlsmith.com, John P. (Pete) Manaut <[jpm@carlsmith.com](mailto:jpm@carlsmith.com)>, Lindsay N. McAneeley <[lmcaaneeley@carlsmith.com](mailto:lmcaaneeley@carlsmith.com)>, T. Shinyama' <[RShinyama@wik.com](mailto:RShinyama@wik.com)>, douging@wik.com <[douging@wik.com](mailto:douging@wik.com)>, mehana kihoi <[uhiwai@live.com](mailto:uhiwai@live.com)>, Kahookahi Kanuha <[kahookahi@gmail.com](mailto:kahookahi@gmail.com)>, Joseph Camara <[kualiic@hotmail.com](mailto:kualiic@hotmail.com)>, lsa@torkildson.com <[lsa@torkildson.com](mailto:lsa@torkildson.com)>, njc@torkildson.com <[njc@torkildson.com](mailto:njc@torkildson.com)>, leina'ala s <[leinaala.mauna@gmail.com](mailto:leinaala.mauna@gmail.com)>, Maelani Lee <[maelanilee@yahoo.com](mailto:maelanilee@yahoo.com)>, Lanny Sinkin <[lanny.sinkin@gmail.com](mailto:lanny.sinkin@gmail.com)>, akulele@yahoo.com <[akulele@yahoo.com](mailto:akulele@yahoo.com)>, s.tabbada@hawaiiintel.net <[s.tabbada@hawaiiintel.net](mailto:s.tabbada@hawaiiintel.net)>, tiffniekakalia <[tiffniekakalia@gmail.com](mailto:tiffniekakalia@gmail.com)>, Glen Kila <[makakila@gmail.com](mailto:makakila@gmail.com)>, Brannon Kealoha <[brannonk@hawaii.edu](mailto:brannonk@hawaii.edu)>, hanahanai@hawaii.rr.com <[hanahanai@hawaii.rr.com](mailto:hanahanai@hawaii.rr.com)>, pohaku7@yahoo.com <[pohaku7@yahoo.com](mailto:pohaku7@yahoo.com)>, Ivy McIntosh <[3popoki@gmail.com](mailto:3popoki@gmail.com)>, Kealamakia Jr. <[mkealama@yahoo.com](mailto:mkealama@yahoo.com)>, Patricia Ikeda

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Dated: June 1, 2017

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Lanny Alan Sinkin