

CARLSMITH BALL LLP

IAN L. SANDISON 5597
JOHN P. MANAUT 3989
LINDSAY N. McANEELEY 8810
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, HI 96813
Tel No. 808.523.2500
Fax No. 808.523.0842
isandison@carlsmith.com
jpm@carlsmith.com
lmcaneley@carlsmith.com

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

WATANABE ING LLP
A Limited Liability Law Partnership

J. DOUGLAS ING 1538-0
BRIAN A. KANG 6495-0
ROSS T. SHINYAMA 8830-0
First Hawaiian Center
999 Bishop Street, Suite 1250
Honolulu, HI 96813
Telephone No.: (808) 544-8300
Facsimile No.: (808) 544-8399
dougIng@wik.com
bkang@wik.com
rshinyama@wik.com

Attorneys for
TMT INTERNATIONAL OBSERVATORY, LLC

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAI'I

IN THE MATTER OF

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

Case No. BLNR-CC-16-002

THE UNIVERSITY OF HAWAI'I AT
HILO AND TMT INTERNATIONAL
OBSERVATORY, LLC'S JOINT
RESPONSE TO TEMPLE OF LONO'S
EXCEPTIONS TO HEARING OFFICER
RIKI MAY AMANO'S FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

**THE UNIVERSITY OF HAWAI‘I AT HILO AND
TMT INTERNATIONAL OBSERVATORY, LLC’S JOINT BRIEF
IN RESPONSE TO OPPOSING INTERVENOR TEMPLE OF LONO’S
EXCEPTIONS TO HEARING OFFICER’S PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER
FILED AS DOCUMENT 783 ON JULY 26, 2017 [DOC. 799]**

The University of Hawai‘i at Hilo (“**UH Hilo**”) and Intervenor TMT International Observatory, LLC (“**TIO**”) jointly submit the following brief in response to Opposing Intervenor the Temple of Lono’s (“**Temple**”) *Exceptions to Hearing Officer’s Proposed Findings of Fact, Conclusions of Law and Decision and Order Filed as Document 783 on July 26, 2017*, filed August 21, 2017 [Doc. 799] (“**Temple’s Exceptions**”) pursuant to Hawai‘i Administrative Rules (“**HAR**”) § 13-1-43.

I. INTRODUCTION

On July 26, 2017, after presiding over forty-four days of testimony from October 2016 through early March 2017, and reviewing hundreds of exhibits, Judge (Ret.) Riki May Amano (“**Hearing Officer**”) issued her detailed Proposed Findings of Fact, Conclusions of Law and Decision and Order [Doc. 783] (“**HO FOF/COL**”). The Hearing Officer recommended that the Conservation District Use Application HA-3568 (“**CDA**”) for the Thirty Meter Telescope (“**TMT**”) Project and the attached TMT Management Plan be approved subject to a number of conditions stated therein. *See* HO FOF/COL at 260-263.

The Board of Land and Natural Resources (“**BLNR**”) issued Minute Order No. 103 on July 28, 2017 [Doc. 784]. Pursuant to Minute Order No. 103, the parties to the Contested Case Hearing (“**CCH**”) were given until no later than August 21, 2017 at 4:00 p.m. to file exceptions

to the HO FOF/COL. Minute Order No. 103 expressly required the following for any exceptions:

The exceptions shall: (1) set forth specifically the questions of procedure, fact, law, or policy, to which exceptions are taken (2) identify that part of the recommendations to which objections are made; and (3) state all grounds for exceptions to a ruling, finding, conclusion, or recommendation. The grounds not cited or specifically urged are waived.

Minute Order No. 103 at 1; *see also* HAR § 13-1-42(b).

Minute Order No. 103 also gave the parties to the CCH until September 11, 2017 at 4:00 p.m. to file any responsive briefs. Minute Order No. 103 expressly required the following for any responsive briefs:

The responsive briefs shall: (1) answer specifically the points of procedure, fact, law, or policy to which exceptions were taken; and (2) state the facts and reasons why the recommendations should be affirmed.

Minute Order No. 103 at 2; *see also* HAR § 13-1-43(b).

The BLNR has scheduled oral arguments on the CDUA for September 20, 2017 at 9:00 a.m. *See* Minute Order No. 103 at 2.

II. STANDARD OF REVIEW

The Temple and the other Petitioners/Opposing Intervenors do not state a position on the applicable standard that BLNR must review the HO FOF/COL. Hawai‘i Revised Statutes (“HRS”) § 91-11 sets out the procedure that is to be followed by an agency where a hearing officer has been employed:

Examination of evidence by agency. Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself,

shall not be made until a proposal for decision^{1]} containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, *who shall personally consider the whole record or such portions thereof as may be cited by the parties.*

HRS §91-11 (emphasis added).

The Hawai‘i Supreme Court has stated that “[t]he general rule is that if an agency making a decision has not heard the evidence, it must at least consider the evidence produced at a hearing conducted by an examiner or a hearing officer.” *White*, 54 Haw. at 13, 501 P.2d at 361. Quoting from the Revised Model State Administrative Procedure Act, Fourth Tentative Draft (1961) (“**RMSAPA**”), the Hawai‘i Supreme Court explained that this requirement “is to make certain that those persons who are responsible for the decision shall have mastered the record, either by hearing the evidence, or reading the record or at the very least receiving briefs and hearing oral argument. It is intended to preclude signing on the dotted line.” *Id.* at 14, 501 P.2d at 362 (citation and internal quotations omitted).

The Hawai‘i Intermediate Court of Appeals (“**ICA**”) described the “function and effect of the hearing officer’s recommendations” in *Feliciano v. Board of Trustees of Employees’*

¹ The Hawai‘i Supreme Court has held that a hearing officer’s recommendations can serve as the agency’s “proposal for decision” under HRS § 91-11. See *White v. Board of Education*, 54 Haw. 10, 14, 501 P.2d 358, 362 (1972); *Cariaga v. Del Monte Corp.*, 65 Haw. 404, 408, 652 P.2d 1143, 1146 (1982); see also *County of Lake v. Pahl*, 28 N.E.3d 1092 (Ind. Ct. App. 2015) (holding that it is not uncommon or per se improper for a trial court to enter findings that are verbatim reproductions of submissions by the prevailing party); *Ivie v. Smith*, 439 S.W.3d 189 (Mo. 2014) (holding that while trial courts must act independently in making findings of fact and conclusions of law, it is not error for trial court to request or receive proposed findings and, in appropriate cases, to adopt those findings); *East Coast Paving & Sealcoating, Inc. v. North Allegheny School Dist.*, 111 A.3d 220 (Pa. Commw. Ct. 2015) (holding that there is nothing untoward about a trial court adopting a party’s proposed findings of fact and conclusions of law as its own).

Retirement System, 4 Haw. App. 26, 659 P.2d 77 (1983). The ICA explained that the recommendations are “to provide guidance” and an agency is “not bound by those findings or recommendations.” *Id.* at 34, 659 P.2d at 82. Indeed, an agency, after review of the reliable, probative and substantial evidence in the proceeding, may reject a hearing officer’s recommendations and “ma[ke] its own findings and conclusions based on the same evidence.” *Id.*

Therefore, BLNR must determine whether the reliable, probative, and substantial evidence in the record as a whole supports approval of the CDUA. However, and notwithstanding that it is not binding, BLNR should give due consideration to, and be guided by, the HO’s FOF/COL, particularly her determinations on the credibility of the witnesses that appeared before her. The RMSAPA provides that “[i]n reviewing findings of fact in a recommended order, the agency head shall consider the presiding officer’s opportunity to observe the witnesses and to determine the credibility of witnesses.” RMSAPA § 415(b) (October 15, 2010). Section 415(b) of the RMSAPA is consistent with the well-settled legal principle that “the fact finder is uniquely qualified to evaluate the credibility of witnesses and to weigh the evidence.” *Wilton v. State*, 116 Hawai‘i 106, 119, 170 P.3d 357, 370 (2007) (citation omitted); *see also* Haw. R. Civ. P. 52(b) (providing that “due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses”).

Other jurisdictions have gone even further and held that a hearing officer’s credibility determinations are entitled to deference so long as the record supports the determination. In *Amanda J. ex rel. Annette J. v. Clark County School Dist.*, 267 F.3d 877 (9th Cir. 2001), the Ninth Circuit was confronted with the question of whether to affirm the State Review Officer’s

decision to deviate from the hearing officer's credibility determination of a witness. Joining its colleagues in the Second, Third, Fourth, and Tenth Circuits, the Ninth Circuit held that

due weight should be accorded to the final State determination . . . unless [the] decision deviates from the credibility determination of a witness whom only the [hearing officer] observed testify. **Traditional notions of deference owed to the fact finder compel this conclusion. The State Review Officer is in no better position than the district court or an appellate court to weigh the competing credibility of witnesses observed only by the Hearing Officer.** This standard comports with general principles of administrative law which give deference to the unique knowledge and experience of state agencies while recognizing that a [hearing officer] who receives live testimony is in the best position to determine issues of credibility.

Id. at 889 (emphases added); *see Doyle v. Arlington Cty Sch. Bd.*, 953 F.2d 100, 105 (4th Cir. 1992) (holding that where two state administrative decisions differ only with respect to the credibility of a witnesses, the hearing officer is entitled to be considered prima facie correct); *Karl by Karl v. Board of Educ. of Geneseo Cent. School Dist.*, 736 F.2d 873, 877 (2d Cir. 1984) (“There is no principle of administrative law which, absent a disagreement between a hearing officer and reviewing agency over demeanor evidence, obviates the need for deference to an agency’s final decision where such deference is otherwise appropriate.”); *Carlisle Area Sch. Dist. v. Scott P.*, 62 F.3d 520-29 (3d Cir. 1995) (“[C]redibility-based findings [of the hearing officer] deserve deference unless non-testimonial, extrinsic evidence in the record would justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion.”); *O’Toole v. Olathe Dist. Schs. Unified Sch Dist. No. 233*, 144 F.3d 692, 699 (10th Cir. 1998) (“[W]e will give due weight to the reviewing officer’s decision on the issues with which he disagreed with the hearing officer, unless the hearing officer's decisions involved credibility determination and assuming, of course, that the record supports the reviewing officer's decision.”); *see also McEwen v. Tennessee Dept. of Safety*, 173 S.W.3d 815, 824 (Tenn. Ct. App.

2005) (holding that if credibility plays a pivotal role, then the hearings officers' or administrative judge's credibility determinations are entitled to substantial deference); *Stejskal v. Dep't. of Administrative Svcs.*, 665 N.W.2d 576, 581 (Neb. 2003) (holding that agencies may consider the fact that the hearing officer, sitting as the trier of fact, saw and heard the witnesses and observed their demeanor while testifying and may give weight to the hearing officer's judgment as to credibility).

Consequently, BLNR should consider and give due regard to the Hearing Officer's credibility determinations so long as those determinations are supported by the reliable, probative, and substantial evidence in the whole record. *See* HRS § 91-14 (providing that administrative findings, conclusions, decisions and orders must be supported by "the reliable, probative, and substantial evidence in the whole record").

III. GENERAL OBJECTIONS TO THE TEMPLE'S EXCEPTIONS

UH Hilo and TIO generally object to the Temple's Exceptions to the extent that they do not comply with Minute Order No. 103 [Doc. 784] and HAR § 13-1-42(b). In many instances, the Temple's Exceptions do not cite to specific findings or conclusions in the HO FOF/COL, and instead cite to findings or conclusions proposed by UH Hilo and TIO, and/or cite to findings or conclusions proposed by the Temple.

UH Hilo and TIO object to each of the points in the Temple's Exceptions to the extent that they are irrelevant, inapplicable, immaterial, mischaracterize the evidence, misstate or misrepresent the record, rely on evidence that is not credible, biased, or incomplete, and/or not supported by the evidence in the record. UH Hilo and TIO also object to the Temple's Exceptions to the extent they assert alleged "findings" or "conclusions" that are beyond the scope of issues set forth in Minute Order No. 19 [Doc. 281] or beyond the scope of the authority delegated by BLNR to the Hearing Officer, or by the legislature to BLNR for these proceedings.

UH Hilo and TIO further object to the Temple's Exceptions to the extent that they raise procedural issues that were previously raised (in some cases, multiple times by multiple parties and through multiple motions for reconsideration) during the course of the CCH, and the arguments were previously fully briefed, considered and rejected by the Hearing Officer or BLNR.

UH Hilo and TIO also object to the Temple's Exceptions to the extent they are not supported by the record and/or applicable legal authority. As set forth in the HO FOF/COL, substantial evidence has been adduced to show that the CDUA satisfies the eight criteria as set forth in HAR § 13-5-30(c). The record also shows that the TMT Project is consistent with UH Hilo's and BLNR's obligations under the public trust doctrine, to the extent applicable, as well as under *Ka Pa'akai*, and Article XI, section I and Article XII, section 7 of the Hawai'i Constitution.

Ultimately, it is evident that the Temple is categorically opposed to the construction of the TMT Project regardless of whether or not it satisfies the legal criteria applicable to the CDUA. No location on the mountain, and no combination of mitigation measures, will make the TMT Project acceptable to the Temple. That position is not supported by the law.

Appendix A contains general objections to the Temple's Exceptions, which UH Hilo and TIO hereby incorporate by reference into their response to each of the Temple's Exceptions, to the extent applicable.

In addition to the general objections in Appendix A, UH Hilo and TIO have prepared a table of specific responses and objections to the Temple's Exceptions, which is attached hereto as **Appendix B**. Citations to the evidence in the record provided herein are not intended to be exhaustive or comprehensive, but demonstrate evidentiary support for UH Hilo and TIO's

responses and objections. Pursuant to Minute Order No. 103 [Doc. 784] and HAR § 13-1-42(b), UH Hilo and TIO object to all unsupported assertions in the Temple's Exceptions, and BLNR should disregard all such unsupported assertions.

The FOF/COL and page numbers referenced herein follow those as provided in the Temple's Exceptions. References to the HO FOF/COL are denoted by the prefix "HO FOF" and "HO COL" for the numbered FOF or COL, respectively, in the HO FOF/COL.

Acronyms and defined terms used herein are defined in the Index of Select Defined Terms in the HO FOF/COL.

IV. CONCLUSION

For the reasons set forth herein and in the UH Hilo Pre-Hearing Statement, TIO's Pre-Hearing Statement, the testimony of UH Hilo's and TIO's witnesses, UH Hilo's and TIO's evidence, the examination of the Petitioners' and Opposing Intervenors' witnesses, and in UH Hilo's and TIO's other filings, and the HO FOF/COL, UH Hilo and TIO respectfully jointly request that the BLNR adopt the HO FOF/COL (as revised to reflect UH Hilo's and TIO's respective proposed exceptions filed on August 21, 2017), and reject the Temple's Exceptions.

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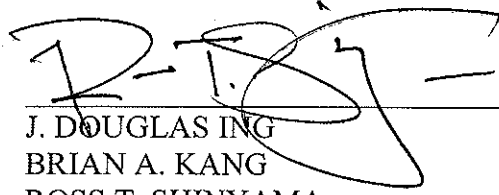
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DATED: Honolulu, Hawai'i, September 11, 2017.



IAN L. SANDISON
JOHN P. MANAUT
LINDSAY N. MCANEELEY

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO



J. DOUGLAS ING
BRIAN A. KANG
ROSS T. SHINYAMA

Attorneys for
TMT INTERNATIONAL OBSERVATORY
LLC

Appendix A

General Responses to Petitioners'/Opposing Intervenors' Exceptions	
Fails to comply with Minute Order No. 103 and HAR § 13-1-42(b)	The Exception should be disregarded because it fails to (1) set forth specifically the questions of procedure, fact, law, or policy, to which exceptions are taken; (2) identify that part of the hearing officer's report and recommended order to which objections are made; or (3) state all grounds for exceptions to a ruling, finding, conclusion, or recommendations. The grounds not cited or specifically urged are waived.
Citation does not support the proposition.	The citation offered by Petitioners/Opposing Intervenors does not support the Exception.
Estoppel/Improper Reconsideration	The Exception or a portion thereof is improper to the extent it is barred by estoppel or waiver, or improperly seeks reconsideration of the Hearing Officer's or the BLNR's prior ruling,
Inaccurate/False	The Exception or a portion thereof is inaccurate or false.
Incomplete.	The Exception is materially incomplete.
Irrelevant/Inapplicable.	The information in the Exception is irrelevant or inapplicable in this contested case proceeding. <i>See</i> Minute Order No. 19 [Doc. 281].
Lack of Jurisdiction	The Exception exceeds the scope of the Hearing Officer's jurisdiction and/or delegated authority
Mischaracterization.	The Exception mischaracterizes legal authority or the contents of the record.
Misleading. Partial quotation.	The Exception contains a partial quote from legal authority or a document in the record, and the incompleteness of the quotation is likely to mislead the reader.
Misleading. Presented out of context.	The Exception presents law or information in the record out of context and/or in a way that is likely to mislead the reader.
Misrepresentation	The Exception affirmatively misrepresents legal authority or the contents of the record.

Not credible.	The Exception is not credible based on the totality of the evidence contained in the record and/or the demonstrated biases of the witness whose testimony is cited in support of the Exception.
Not in dispute.	Either (1) the Exception is not at issue in this proceeding, or (2) standing alone, the Exception is not objectionable. The designation of any individual Exception as “not in dispute” does not and should not be construed as an admission of said Exception or a concession that said Exception should be incorporated into the final FOFs and COLs. It also does not and should not be construed as assent to any inferences suggested or that may be suggested by Petitioners/Opposing Intervenors from, e.g., their misleading grouping or ordering of otherwise unrelated facts.
Not in evidence.	The Exception asserts “facts” and/or cites documents that are not in evidence.
Unsupported/Unsubstantiated	The Exception is not supported by information in the record or was not substantiated by the Petitioners/Opposing Intervenors through the contested case process.

Appendix B

Summary Table of Responses to the Temple's Proposed FOF/COL

Exception #	Page	Exception	Response
II. EXCEPTIONS			
A. Preface			
1	1	From the early stages of this proceeding, the Temple of Lono understood that the Hearing Officer viewed her task as developing a record that would support the approval of the permit sought to build the Thirty Meter Telescope and to protect the Applicant from any serious challenges.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.
2	1	Various examples of that bias will be discussed in the exceptions filed herein.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.
3	1	One form of bias is denying the Temple and other parties opposing the permit application the ability to take exceptions to the HO Proposal. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order filed August 13, 2017.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL. This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.
4	1	As will be discussed below, the evidence of bias also includes simply cutting and pasting material from the UHH/TIO Proposed Findings of Fact, Conclusions of Law, and Decision and Order (Hereinafter "App Proposal").	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.

DOC-671.

The Temple argues that, by ruling against it and adopting the majority of UH Hilo's and TIO's joint proposed FOF/COL, the Hearing Officer demonstrated bias. However, it is well established that an adverse ruling does not evidence bias. See *Jou v. Dai-Tokyo Royal State Ins. Co.*, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); *James W. Glover, Ltd. v. Fong*, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification"). Additionally, the Hearing Officer accepting proposed findings of fact or conclusions, even if adopted verbatim, does not establish Hearing Officer bias. See generally, *Kumar v. Kumar*, 2014 WL 1632111, at *8 (Ct. App. 2014) (holding that a court's substantial adoption of a proposed decree did not establish an appearance of impartiality, i.e., bias). In the context of civil proceedings, it is widely accepted that a trial judge may adopt a party's proposed findings in total or in part. See, e.g., *Howard v. Howard*, 259 P.2d 41, 42 (Cal.App. 2 Dist. 1953) (stating that courts may adopt proposed finding in total or in part); *American Water Development, Inc. v. City of Alamosa*, 874 P.2d 352, 376 (Colo.1994) (holding that the adoption of a proposed FOF/COL is not necessarily improper, and that "[F]indings, if otherwise sufficient, are not weakened or

Exception #	Page	Exception	Response
5	1	<p>The bias also takes the form of refusing to address the factual and legal findings found in the Temple's Proposed Decisions and Orders Including Findings of Fact and Conclusions of Law) (Hereinafter "ToL Proposal"). DOC-651.</p>	<p>discredited because given in the form submitted by counsel.") (citations omitted).</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order; The University of Hawaii at Hilo's Opposition to Temple of Lono's Motion to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p> <p>There is no reliable probative, substantial and credible evidence or testimony to support the Temple's claims of bias.</p>
6	1	<p>One root of the bias is surely the fact that the Hearing Officer was hired by and is being paid tens of thousands of dollars by the agency that already voted once to grant the permit at issue. The subversive impact of that earlier illegal decision cannot be removed from this proceeding. See ToL Proposal ¶¶10-18; see also <i>ibid.</i> ¶¶19-35 (additional bias in this proceeding),</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>There is no reliable probative, substantial and credible evidence or testimony to support the Temple's claims of bias.</p>

B. The Hearing Officer violated the applicable administrative rule by ordering the parties to prepare and submit findings of fact and conclusions of law before the record was complete.	
7	<p>The Temple takes an initial procedural exception to the Hearing Officer's scheduling of the preparation and filing of findings and conclusions.</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>
8	<p>The applicable rule states: (a) After all evidence has been taken, the parties may submit, within the time set by the presiding officer, a proposed decision and order which shall include proposed findings of facts and conclusions of law. HAR § 13-1-38 (emphasis added).</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HAR § 13-1-38 speaks for itself and does not support the Temple's assertions.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>
9	<p>The Hearing Officer initiated the process of filing proposed findings of fact, conclusions of law, decision and order prior to the close of the record. See DOC-552 (Minute Order 43 Setting Post-Hearing Deadlines) filed on April 19, 2017 setting a deadline for findings and conclusions on May 30, 2017; DOC-782 (Minute Order No. 102: Declaration of Record Closed) filed on July 25, 2017.</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HAR § 13-1-38(a) does not require the Hearing Officer to wait until the closure of the entire record prior to setting the deadline for the submission of the proposed FOF/COL. Nor does</p>

<p>the rule condition the setting of the deadline to submit proposed FOF/COL on the receipt of all evidence such as exhibits moved into evidence post-hearing. HAR § 13-1-38(a); Minute Order No. 50 [Doc. 646]. The only limitation in the rule is that the deadline for submitting proposed FOF/COL cannot be “less than ten days after the transcript is prepared and available.” HAR § 13-1-38(a).</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>	<p>Parties objected to this premature deadline for filing findings to no avail. See e.g. ToL ¶¶ 210-213.</p>	<p>10</p> <p>2</p>
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>	<p>In the period between the May 30th deadline for filing findings and conclusions and the July 25th close of the record, more than 100 pleadings were filed, see DOCs-674-781, and the Hearing Officer issued 44 Minute Orders, many potentially affecting the record. See Minute Order Nos. 57-101.</p>	<p>11</p> <p>2</p>
<p>This exception does not comply with Minute</p>	<p>HAR 13-1-38 requires that the record be complete before</p>	<p>12</p> <p>2</p>

	<p>the initiation of findings and conclusions and the setting of deadlines for such filings.</p>	<p>Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HAR § 13-1-38 speaks for itself and does not support Temple's assertions.</p> <p>HAR § 13-1-38(a) does not require the Hearing Officer to wait until the closure of the entire record prior to setting the deadline for the submission of the proposed FOF/COL. Nor does the rule condition the setting of the deadline to submit proposed FOF/COL on the receipt of all evidence such as exhibits moved into evidence post-hearing. HAR § 13-1-38(a); Minute Order No. 50 [Doc. 646]. The only limitation in the rule is that the deadline for submitting proposed FOF/COL cannot be "less than ten days after the transcript is prepared and available." HAR § 13-1-38(a).</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HAR § 13-1-38 speaks for itself and does not support Temple's assertions.</p>
13	2	<p>That reading of the rule is the only one that makes any sense. To make findings on a changing record results in findings made obsolete by later rulings or forecloses findings altogether. See e.g. ToL Proposal ¶190 (finding that failure of Hearing Officer to rule denied due process right to motion for reconsideration); DOC-438 (denying the motion in question and doing so after the deadline for filing findings and conclusions). See also DOC-760</p>

<p>(Cindy Freitas motion to supplement the record with additional exhibits) filed on July 10, 2017); DOC-781 (denying motion to supplement the record) filed on July 24, 2017.</p>	<p>HAR § 13-1-38(a) does not require the Hearing Officer to wait until the closure of the entire record prior to setting the deadline for the submission of the proposed FOF/COL. Nor does the rule condition the setting of the deadline to submit proposed FOF/COL on the receipt of all evidence such as exhibits moved into evidence post-hearing. HAR § 13-1-38(a); Minute Order No. 50 [Doc. 646]. The only limitation in the rule is that the deadline for submitting proposed FOF/COL cannot be “less than ten days after the transcript is prepared and available.” HAR § 13-1-38(a).</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>
<p>Numerous other examples could be provided demonstrating that initiating findings and conclusions and requiring their submission prior to the close of the record creates a dysfunctional process and a dysfunctional record.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HAR § 13-1-38 speaks for itself and does not support Temple’s assertions.</p> <p>HAR § 13-1-38(a) does not require the Hearing Officer to wait until the closure of the entire record prior to setting the deadline for the submission of the proposed FOF/COL. Nor does the rule condition the setting of the deadline to submit proposed FOF/COL on the receipt of all evidence such as exhibits moved into evidence</p>

			<p>post-hearing. HAR § 13-1-38(a); Minute Order No. 50 [Doc. 646]. The only limitation in the rule is that the deadline for submitting proposed FOF/COL cannot be “less than ten days after the transcript is prepared and available.” HAR § 13-1-38(a).</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p>
15	2-3	<p>The only reasonable explanation for the Hearing Officer forcing parties to prematurely prepare findings and conclusions is that the Hearing Officer was trying to expedite the proceeding to meet the TMT Project’s announced intention to leave Hawai’i, if the construction cannot begin by April 2018. http://hawaii.tribune-herald.com/news/local-news/tmt-wants-resume-construction-2018-pace-contested-case-could-impact-deadline</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. for Recon. Minute Order 43 [Doc. 559]; Minute Order No. 50 [Doc. 646].</p> <p>HAR § 13-1-38 speaks for itself and does not support Temple’s assertions.</p> <p>HAR § 13-1-38(a) does not require the Hearing Officer to wait until the closure of the entire record prior to setting the deadline for the submission of the proposed FOF/COL. Nor does the rule condition the setting of the deadline to submit proposed FOF/COL on the receipt of all evidence such as exhibits moved into evidence post-hearing. HAR § 13-1-38(a); Minute Order No. 50 [Doc. 646]. The only limitation in the</p>

<p>rule is that the deadline for submitting proposed FOF/COL cannot be “less than ten days after the transcript is prepared and available.” HAR § 13-1-38(a).</p> <p>There is no reliable probative, substantial and credible evidence or testimony to support the Temple’s claims that the Hearing Officer expedited the contested case in order to meet an April 2018 construction deadline. The record demonstrates that the Hearing Officer carefully considered the state of the record in extending the standard deadline for proposed FOF/COL. As noted above, although HAR § 13-1-38(a) provides that proposed findings of fact and conclusions of law are to be filed with BLNR and served “not later than ten days after the transcript is prepared and available, unless the presiding officer shall otherwise prescribe,” the Hearing Officer allotted nearly six weeks for the parties to finalize and file their Proposed FOF/COL after the transcripts were made available. See Minute Order No. 43, filed April 18, 2017 [Doc. 552].</p>		
<p align="center">C. The Hearing Officer denied opponents of the permit the ability to file exceptions.</p>		
<p>16</p>	<p>3</p> <p>In violation of the rules, the Hearing Officer’s Proposal denied opponents of the application a meaningful opportunity to file exceptions.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See</p>

<p>Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 speaks for itself and does not support the Temple's assertions. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12).</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>	<p>The administrative rule applicable to the Hearing Officer's response to findings of fact presented by the parties states: Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so presented. The agency shall notify the parties to the proceeding by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to the party's attorney of record. HRS §91-12 (emphasis added).</p>	
<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural</p>	<p>The HO Proposal states: Any proposed finding of fact submitted by the parties which is not</p>	

<p>Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>	<p>specifically incorporated is rejected for one or more of the following reasons:</p> <ul style="list-style-type: none"> -- They are repetitious or similar to the Hearing Officer's own findings of fact or conclusions of law or decision and order, and/or -- They are not supported by reliable and/or (probative evidence, and/or -- They are in whole or in part (not supported by and/or are contrary to the facts or law, and/or -- They are immaterial, superfluous, and/or irrelevant to the material facts, issues, and/or law of this case. <p>HO Proposal at page 7.</p>	<p>19</p>	<p>3-4</p>
<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p> <p>Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12).</p>	<p>Unpacking this laundry list reveals that the reasons for rejection can be that the proposed finding meets one or more of the following tests:</p> <ul style="list-style-type: none"> (1) repetitious of the Hearing Officer's own <ul style="list-style-type: none"> (a) findings of fact, (b) conclusions of law (c) decision and order (2) similar to the Hearing Officer's own <ul style="list-style-type: none"> (a) findings of fact, (b) conclusions of law (c) decision and order (3) not supported by reliable evidence (4) not supported by probative evidence (5) in whole not supported by <ul style="list-style-type: none"> (a) the facts (b) the law (6) in part not supported by <ul style="list-style-type: none"> (a) the facts (b) the law (7) immaterial to <ul style="list-style-type: none"> (a) material facts of this case (b) issues of this case 	<p>3-4</p>	<p>3-4</p>

	<p>(c) law of this case</p> <p>(8) superfluous to</p> <p>(a) material facts of this case</p> <p>(b) issues of this case</p> <p>(c) law of this case</p> <p>(9) irrelevant to</p> <p>(a) material facts of this case</p> <p>(b) issues of this case law of this case</p>		<p>20</p>	<p>These 21 different grounds for rejection are distinguishable for purposes of taking exception, if they were connected to a finding.</p>	<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
	<p>Instead, the proponent of a proposed finding of fact included in the Hearing Officer's wholesale rejection of findings, which are not specifically identified or ruled upon, is left to first search out which proposed findings disappeared. The party must then engage in pure speculation as to which of the 21 possible reasons for rejection is applicable to the disappeared finding.</p>	<p>4</p>	<p>21</p>	<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p> <p>Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castile Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12).</p>	

22	5	<p>Obviously that process is not a meaningful opportunity to file exceptions.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p> <p>Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12).</p>
23	5	<p>This approach by the Hearing Officer is a direct violation of HRS §91-12.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12).</p>

		<p>While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>	<p>While the Temple's exact proposed language</p>
<p>24</p>	<p>5</p> <p>The Temple filed a motion with the Board seeking a remand to the Hearing Officer with instructions to comply with HRS §91-12. Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order filed August 13, 2017.</p>	<p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12).</p>	<p>While the Temple's exact proposed language</p>

<p>may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
<p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12).</p> <p>While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence</p>	<p>The only reasonable explanation for the Hearing Officer's refusal to take the time required by HRS §91-12 to rule on each finding of fact presented by a party is that the Hearing Officer was trying to expedite the proceeding to meet the TMT Project's announced intention to leave Hawai'i, if the construction cannot begin by April 2018. http://hawaii.tribune-herald.com/news/local-news/tmt-wants-resume-construction-2018-pace-contested-case-could-impact-deadline</p>	<p>25</p> <p>5</p>

<p>received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p> <p>There is no reliable probative, substantial and credible evidence or testimony to support the Temple's claims that the Hearing Officer expedited the contested case in order to meet an April 2018 construction deadline.</p>		
<p align="center">D. The Hearing Officer's treatment of the desecration issue is further evidence of bias.</p>		
<p>26</p>	<p>5</p> <p>Additional evidence of bias is the Hearing Officer's failure to independently consider the legal and factual presentations in the Temple's Proposal and, instead, simply adopting uncritically the Applicant's proposed findings and conclusions.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple argues that, by ruling against it and adopting the majority of UH Hilo's and TIO's joint proposed FOF/COL, the Hearing Officer demonstrated bias. However, it is well established that an adverse ruling does not</p>

		<p>evidence bias. See <i>Jou v. Dai-Tokyo Royal State Ins. Co.</i>, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); <i>James W. Glover, Ltd. v. Fong</i>, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification"). Additionally, the Hearing Officer accepting proposed findings of fact or conclusions, even if adopted verbatim, does not establish Hearing Officer bias. See generally, <i>Kumar v. Kumar</i>, 2014 WL 1632111, at *8 (Ct. App. 2014) (holding that a court's substantial adoption of a proposed decree did not establish an appearance of impartiality, i.e., bias). In the context of civil proceedings, it is widely accepted that a trial judge may adopt a party's proposed findings in total or in part. See, e.g., <i>Howard v. Howard</i>, 259 P.2d 41, 42 (Cal.App. 2 Dist. 1953) (stating that courts may adopt proposed finding in total or in part); <i>American Water Development, Inc. v. City of Alamosa</i>, 874 P.2d 352, 376 (Colo.1994) (holding that the adoption of a proposed FOF/COL is not necessarily improper, and that "[f]indings, if otherwise sufficient, are not weakened or discredited because given in the form submitted by counsel.") (citations omitted).</p>
27	5	<p>One example of that failure is found in the Proposal's treatment of the desecration issue.</p>
		<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>

	<p>The Temple argues that, by ruling against it and adopting the majority of UH Hilo's and TIO's joint proposed FOF/COL, the Hearing Officer demonstrated bias. However, it is well established that an adverse ruling does not evidence bias. See <i>Jou v. Dai-Tokyo Royal State Ins. Co.</i>, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); <i>James W. Glover, Ltd. v. Fong</i>, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification"). Additionally, the Hearing Officer accepting proposed findings of fact or conclusions, even if adopted verbatim, does not establish Hearing Officer bias. See generally, <i>Kumar v. Kumar</i>, 2014 WL 1632111, at *8 (Ct. App. 2014) (holding that a court's substantial adoption of a proposed decree did not establish an appearance of impartiality, i.e., bias). In the context of civil proceedings, it is widely accepted that a trial judge may adopt a party's proposed findings in total or in part. See, e.g., <i>Howard v. Howard</i>, 259 P.2d 41, 42 (Cal.App. 2 Dist. 1953) (stating that courts may adopt proposed finding in total or in part); <i>American Water Development, Inc. v. City of Alamosa</i>, 874 P.2d 352, 376 (Colo.1994) (holding that the adoption of a proposed FOF/COL is not necessarily improper, and that "[F]indings, if otherwise sufficient, are not weakened or discredited because given in the form submitted by counsel.") (citations omitted).</p>

<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Interveners' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>		
<p>The Temple argues that, by ruling against it and adopting the majority of UH Hilo's and TIO's joint proposed FOF/COL, the Hearing Officer demonstrated bias. However, it is well established that an adverse ruling does not evidence bias. See <i>Jou v. Dai-Tokyo Royal State Ins. Co.</i>, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); <i>James W. Glover, Ltd. v. Fong</i>, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification"). Additionally, the Hearing Officer accepting proposed findings of fact or conclusions, even if adopted verbatim, does not establish Hearing Officer bias. See generally, <i>Kumar v. Kumar</i>, 2014 WL 1632111, at *8 (Ct. App. 2014) (holding that a court's substantial adoption of a proposed decree did not establish an appearance of impartiality, i.e., bias). In the</p>	<p>As a comparative examination reveals, the entire section on desecration in the HO Proposal CoL ¶¶399-413, is cut and pasted from the App Proposal CoL ¶¶392-407.</p>	<p>28</p> <p>5</p>

			<p>context of civil proceedings, it is widely accepted that a trial judge may adopt a party's proposed findings in total or in part. See, e.g., <i>Howard v. Howard</i>, 259 P.2d 41, 42 (Cal.App. 2 Dist. 1953) (stating that courts may adopt proposed finding in total or in part); <i>American Water Development, Inc. v. City of Alamosa</i>, 874 P.2d 352, 376 (Colo.1994) (holding that the adoption of a proposed FOF/COL is not necessarily improper, and that "[F]indings, if otherwise sufficient, are not weakened or discredited because given in the form submitted by counsel.") (citations omitted).</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
29	5	<p>{Note: While copying and pasting, the Hearing Officer forgot to change one of the paragraph numbers. Compare HO Proposal CoL ¶397 at page 250 and App Proposal CoL ¶397 at page 210.}</p>	<p>UH Hilo and TIO have no objection to the correction of the typographical error in this HO COL, which is otherwise proper, and is supported by probative, reliable, substantial and credible evidence in the record.</p>
30	5	<p>The requirement for independence in the Hearing Officer is a general principle in agency practice. For example, when</p>	<p>The Temple argues that, by ruling against it and adopting the majority of UH Hilo's and TIO's</p>

an agency accepts information from an applicant for an environmental assessment, the agency is required to independently evaluate the information and make its own determinations regarding the import to be given that information. 40 C.F.R. § 1506.25(a), (b). Only after such an independent inquiry can the agency incorporate the information into its final determination.

joint proposed FOF/COL, the Hearing Officer demonstrated bias. However, it is well established that an adverse ruling does not evidence bias. See *Jou v. Dai-Tokyo Royal State Ins. Co.*, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); *James W. Glover, Ltd. v. Fong*, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification"). Additionally, the Hearing Officer accepting proposed findings of fact or conclusions, even if adopted verbatim, does not establish Hearing Officer bias. See generally, *Kumar v. Kumar*, 2014 WL 1632111, at *8 (Ct. App. 2014) (holding that a court's substantial adoption of a proposed decree did not establish an appearance of impartiality, i.e., bias). In the context of civil proceedings, it is widely accepted that a trial judge may adopt a party's proposed findings if total or in part. See, e.g., *Howard v. Howard*, 259 P.2d 41, 42 (Cal.App. 2 Dist. 1953) (stating that courts may adopt proposed finding in total or in part); *American Water Development, Inc. v. City of Alamosa*, 874 P.2d 352, 376 (Colo.1994) (holding that the adoption of a proposed FOF/COL is not necessarily improper, and that "[F]indings, if otherwise sufficient, are not weakened or discredited because given in the form submitted by counsel.") (citations omitted).

The citation to 40 C.F.R. § 1506.25 does not

<p>support the Temple's assertions as there is no regulation at 40 C.F.R. § 1506.25. The Temple's citation is likely to 40 C.F.R. § 1506.5; however, that citation also does not support the Temple's assertion because it applies to a context that is not analogous to these proceedings. Moreover, even if an analogy could be drawn, the Temple has proffered no reliable probative, substantial and credible evidence or testimony from the record that the Hearing Officer failed to independently evaluate the proposed findings that were adopted.</p>			<p>31</p>
<p>The Temple argues that, by ruling against it and adopting the majority of UH Hilo's and TIO's joint proposed FOF/COL, the Hearing Officer demonstrated bias. However, it is well established that an adverse ruling does not evidence bias. See <i>Jou v. Dai-Tokyo Royal State Ins. Co.</i>, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); <i>James W. Glover, Ltd. v. Fong</i>, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification"). Additionally, the Hearing Officer accepting proposed findings of fact or conclusions, even if adopted verbatim, does not establish Hearing Officer bias. See generally, <i>Kumar v. Kumar</i>, 2014 WL 1632111, at *8 (Ct. App. 2014) (holding that a court's substantial adoption of a proposed decree did not establish an appearance of impartiality, i.e., bias). In the context of civil proceedings, it is widely</p>	<p>Cutting and pasting is evidence of a predetermined outcome and/or bias.</p>	<p>5</p>	

<p>accepted that a trial judge may adopt a party's proposed findings in total or in part. See, e.g., <i>Howard v. Howard</i>, 259 P.2d 41, 42 (Cal.App. 2 Dist. 1953) (stating that courts may adopt proposed finding in total or in part); <i>American Water Development, Inc. v. City of Alamosa</i>, 874 P.2d 352, 376 (Colo.1994) (holding that the adoption of a proposed FOF/COL is not necessarily improper, and that "[F]indings, if otherwise sufficient, are not weakened or discredited because given in the form submitted by counsel.") (citations omitted).</p>			<p>32</p>
<p>The Temple argues that, by ruling against it and adopting the majority of UH Hilo's and TIO's joint proposed FOF/COL, the Hearing Officer demonstrated bias. However, it is well established that an adverse ruling does not evidence bias. See <i>Jou v. Dai-Tokyo Royal State Ins. Co.</i>, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); <i>James W. Glover, Ltd. v. Fong</i>, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification"). Additionally, the Hearing Officer accepting proposed findings of fact or conclusions, even if adopted verbatim, does not establish Hearing Officer bias. See generally, <i>Kumar v. Kumar</i>, 2014 WL 1632111, at *8 (Ct. App. 2014) (holding that a court's substantial adoption of a proposed decree did not establish an appearance of impartiality, i.e., bias). In the context of civil proceedings, it is widely</p>	<p>Wholesale cutting and pasting also saves time increasing the opportunity for the granting of the permit before the TMT decides to leave Hawai'i. http://hawaii.tribune-herald.com/news/local-news/tmt-wants-resume-construction-2018-pace-contested-case-could-impact-deadline</p>	<p>5-6</p>	

<p>accepted that a trial judge may adopt a party's proposed findings in total or in part. See, e.g., <i>Howard v. Howard</i>, 259 P.2d 41, 42 (Cal.App. 2 Dist. 1953) (stating that courts may adopt proposed finding in total or in part); <i>American Water Development, Inc. v. City of Alamosa</i>, 874 P.2d 352, 376 (Colo.1994) (holding that the adoption of a proposed FOF/COL is not necessarily improper, and that "[F]indings, if otherwise sufficient, are not weakened or discredited because given in the form submitted by counsel.") (citations omitted).</p> <p>There is no reliable probative, substantial and credible evidence or testimony to support the Temple's claims that the Hearing Officer expedited the contested case in order to meet an April 2018 construction deadline.</p>		
<p>E. The Hearing Officer misstates the desecration issue.</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute</p>	<p>The omission of independent consideration is serious when the issue involved is serious. In this case, there could hardly be a more serious issue than whether the application for a permit to build the TMT in the Conservation District is, in fact, an application to break the law.</p>	<p>33</p> <p>6</p>

<p>Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>			
<p>The Temple argues that, by ruling against it and adopting the majority of UH Hilo's and TIO's joint proposed FOF/COL, the Hearing Officer demonstrated bias. However, it is well established that an adverse ruling does not evidence bias. See <i>Jou v. Dai-Tokyo Royal State Ins. Co.</i>, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); <i>James W. Glover, Ltd. v. Fong</i>, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification"). Additionally, the Hearing Officer accepting proposed findings of fact or conclusions, even if adopted verbatim, does not establish Hearing Officer bias. See <i>generally, Kumar v. Kumar</i>, 2014 WL 1632111, at *8 (Ct. App. 2014) (holding that a court's substantial adoption of a proposed decree did not establish an appearance of impartiality, i.e., bias). In the context of civil proceedings, it is widely</p>	<p>As the Hearing Officer and the Applicant are indistinguishable on this subject, the Temple will refer to them as the HO/A. Paragraph references will be to the Hearing Officer's copy.</p>	<p>6</p>	<p>34</p>

35			<p>accepted that a trial judge may adopt a party's proposed findings in total or in part. See, e.g., <i>Howard v. Howard</i>, 259 P.2d 41, 42 (Cal.App. 2 Dist. 1953) (stating that courts may adopt proposed finding in total or in part); <i>American Water Development, Inc. v. City of Alamosa</i>, 874 P.2d 352, 376 (Colo.1994) (holding that the adoption of a proposed FOF/COL is not necessarily improper, and that "[F]indings, if otherwise sufficient, are not weakened or discredited because given in the form submitted by counsel.") (citations omitted).</p>
36	6	<p>The HO/A first argues as follows: The BLNR does not have jurisdiction to adjudicate violations of the Hawai'i Penal Code. ... On the basis for the foregoing, the alleged desecration fails as a matter of law." HO CoL ¶401.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawai'i Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>HO COL 401 is accurate and supported by the evidence in the record.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawai'i Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p>
36	6	<p>The Temple agrees entirely with the first statement and takes exception to the second statement.</p>	<p>HO COL 401 is accurate and supported by the evidence in the record.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawai'i Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p>

37	6	<p>The desecration issue is not whether the Applicant has broken the law. The question is whether the Applicant is requesting a permit to break the law.</p>	<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Interveners' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
38	6	<p>As this distinction is apparently not recognized by the HO/A, perhaps an example will suffice to illuminate the issue. Imagine that a party filed an application with the BLNR to excavate a burial site on Mauna Kea for purposes of removing the artifacts in the site and placing them in a protected display case at a local hotel.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Interveners' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>This exception constitutes an improper</p>

<p>hypothetical. The Temple's hypothetical "facts" are not in the record and therefore not before BLNR, and the hypothetical does not accurately reflect the land use requested in the CDUA for the TMT Project. The Temple's prognostication of BLNR's presumed analysis and response under the hypothetical "facts" is pure conjecture and has no relevance to this proceeding.</p>		
<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>This exception constitutes an improper hypothetical. The Temple's hypothetical "facts" are not in the record and therefore not before BLNR, and the hypothetical does not accurately reflect the land use requested in the CDUA for the TMT Project. The Temple's prognostication of BLNR's presumed analysis and response under the hypothetical "facts" is pure conjecture and has no relevance to this proceeding.</p>	<p>The proposal is thus to deliberately (intentionally) dig up a burial site (mistreat) with almost certainly the knowledge that the removal and public display of the artifacts would cause public outrage.</p>	<p>6</p>
<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's</p>	<p>The agency would have no problem determining that the applicant was asking for a permit to break the law by desecrating a burial. The agency would – and should –</p>	<p>6</p>
		<p>40</p>

		<p>dismiss the application without needing to find the Applicant to be guilty or not guilty of any violation of the law.</p>	<p>claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>This exception constitutes an improper hypothetical. The Temple's hypothetical "facts" are not in the record and therefore not before BLNR, and the hypothetical does not accurately reflect the land use requested in the CDUA for the TMT Project. The Temple's prognostication of BLNR's presumed analysis and response under the hypothetical "facts" is pure conjecture and has no relevance to this proceeding.</p>
41	6	<p>Declining to consider an application to break the law is obviously different from prosecuting someone for breaking the law.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
42	7	<p>In this case, the Board of Land and Natural Resources decision to be made is whether to grant a permit.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it</p>

<p>did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>			
<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>	<p>The desecration challenge is made in the context of the application for a permit, not a criminal proceeding. If the Board lacks jurisdiction or the legal capacity to hear an application for a permit, then this entire proceeding is meaningless.</p>	<p>7</p>	<p>43</p>
<p>F. In the HO Proposal, the Hearing Officer erroneously interprets the desecration statute in a manner that relieves the Hearing Officer of having to address the issues raised by the Temple.</p>			
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it</p>	<p>The desecration statute states:</p> <p>(1) A person commits the offense of desecration if the person intentionally desecrates:</p> <ul style="list-style-type: none"> (a) Any public monument or structure; or (b) A place of worship or burial; or (c) In a public place the national flag or any other object of veneration by a substantial 	<p>7</p>	<p>44</p>

		<p>segment of the public.</p> <p>(2) "Desecrate" means defacing, damaging, polluting, or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover the defendant's action.</p> <p>(3) Any person convicted of committing the offense of desecration shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$10,000, or both.</p>	<p>did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>HRS § 711-1107 speaks for itself and does not support the Temple's assertions.</p>
45	7	<p>The HO/A confuses the meaning of various terms in the statute to hide the obvious applicability of the desecration statute to the Applicant's proposal. HO CoL ¶¶397-407.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>HRS § 711-1107 speaks for itself and does not support the Temple's assertions.</p> <p>HO COLs 397-497 are accurate and supported by the evidence in the record.</p>

46	7	<p>The first victim of this confusion is the term “intentionally.” In the context of the statute, the term means nothing more than deliberate as opposed to accidental. The initial inquiry is satisfied once it is determined that the actor intends to commit the act. The inquiry then proceeds to the next test.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners’ and Opposing Intervenor’s claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple’s Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>HRS § 711-1107 speaks for itself and does not support the Temple’s assertions.</p>
47	7-8	<p>The second victim of the confusion is the term “mistreating.” The “mistreating” test is whether the action proposed would deface, damage, pollute or otherwise physically mistreat the site or object. The question of whether the desecration inquiry would continue is answered, in part, by whether the acts physically mistreat the protected site? In the example above, the excavation of the burial site is physical mistreatment. If not, the inquiry ends. If so, the inquiry continues.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners’ and Opposing Intervenor’s claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple’s Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>HRS § 711-1107 speaks for itself and does not support the Temple’s assertions.</p>
48	8	<p>The third victim is the outrage test. Having misdirected attention to the terms “intentionally” and “mistreating,” the HO/A hides the last part of the test. The question to be</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners’ and Opposing Intervenor’s</p>

		<p>answered is whether the actor “knows [the actions proposed] will outrage the sensibilities of persons likely to observe or discover the defendant’s action.” The question is the expected response to the action by the people who consider the site sacred, not the mental state, e.g. ill-intent, of the actor. In the example above, the public reaction to the excavation and display is predictably outrage.</p>	<p>claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple’s Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>HRS § 711-1107 speaks for itself and does not support the Temple’s assertions.</p>
49	8	<p>The statute only requires a showing of knowledge that the action would provoke outrage.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners’ and Opposing Intervenors’ claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple’s Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>HRS § 711-1107 speaks for itself and does not support the Temple’s assertions.</p>
50	8	<p>Knowledge is distinct from intent. HRS §702-206(1), (2).</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners’ and Opposing Intervenors’ claim of desecration fails as a matter of law. HO COL 399-413.</p>

51			<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>HRS § 702-206(1), (2) speaks for itself and does not support the Temple's assertions.</p>
8	<p>Knowledge only requires that the actor be aware of likely consequence of her action. <u>Ibid.</u> (2). The statutory definition that best fits the circumstances of this case is the following:</p> <p style="padding-left: 40px;">A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.”</p> <p><u>Ibid.</u> (2) (c).</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>	<p>HRS § 702-206(1), (2) speaks for itself and does not support the Temple's assertions.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p>
52	<p>As will be discussed below, the Applicant was fully aware that a proposal to build the TMT on Mauna Kea would provoke outrage before the site was even selected. Failing to acknowledge the last test of the statute was an effort to prevent any attention being given to that fact and its implications.</p>		<p>HRS § 702-206(1), (2) speaks for itself and does not support the Temple's assertions.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception does not comply with Minute Order No. 103 [Doc. 784] and improperly seeks reconsideration of issues previously raised and</p>

		<p>ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
<p>53</p>	<p>G. The motives of the TMT proponents are far from benign.</p> <p>The HO Proposal finds that the excavation of 62 tons of cinder from the sacred Mauna, putting in an artificial foundation, and building an 18 story building shows no evidence [of] 'specific ill-intent to mistreat Mauna Kea through defacing, damaging or polluting the mountain through the development of the TMT Project, where it is undisputed that the project has been proposed for the Astronomy Precinct within the Resource subzone of the Conservation District, in which by law, "astronomy facilities" are expressly permitted – and in fact currently exist.</p> <p>HO CoL ¶410.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>HO COL 410 is accurate and supported by the evidence in the record.</p>
<p>54</p>	<p>1. The Applicant knew that the selection of Mauna Kea as the site for the TMT would provoke outrage.</p> <p>The motivations of the Applicant are hardly as benign as the Applicant attempts to argue.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>

55	9	Prior to selection of Mauna Kea as the site for the proposed TMT, Applicant commissioned a risk assessment. DOC-491, Exhibit L23 (Keystone Center Report).	654]. BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413. This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].
56	9	This report documented the extensive hewa that the selection of Mauna Kea would cause in the Hawaiian community.	BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413. This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].
57	9	The Applicant, therefore, knew, before selecting Mauna Kea as the site for the TMT, that pursuing Mauna Kea as a site for the TMT would provoke significant community controversy, including significant opposition.	Ex. L23 speaks for itself. BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.

			<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
58	9	<p>The Applicant proceeded to choose Mauna Kea anyway.</p>	<p>Ex. L23 speaks for itself.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
59	9	<p>To proceed with a project that the proponent knows will generate public outrage satisfies that test for the application of the statute to the proposal.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
60	9	<p>The Board can take note that the predicted outrage did</p>	<p>BLNR does not have jurisdiction to adjudicate</p>

	<p>manifest. ToL Proposal ¶¶ 121-123.</p>	<p>violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. <i>See</i> Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
61	<p>9</p> <p>Even after hundreds of people risked arrest by physically blocking an effort to construct the TMT, while TMT had a permit later vacated, and the legal challenge succeeded in ultimately vacating the permit, the TMT remains steadfast in its commitment to build the TMT on Mauna Kea, i.e. to continue to provoke outrage.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. <i>See</i> Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
62	<p>9</p> <p>The predicted outrage that did surface constitutes evidence of the Applicant's disrespect for those who would be most negatively affected by a decision to build on Mauna Kea.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. <i>See</i> Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J.</p>

			(desecration) [Doc. 264]; Minute Order 53 [Doc. 654].
2. The Applicant openly attacked the Temple as extremist.			
63	9	<p>Contributing to that evidence of the Applicant's prejudicial motives are the statements made by the Applicant in the contested case hearing that attacked the Temple of Lono as an extremist organization. DOC-135 at 14-15; see also ToL Proposal ¶¶128-171.</p>	<p>To the extent that the Temple argues that the purported "attack" is relevant to its claims of desecration, BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues (<i>i.e.</i>, desecration and disqualification) previously raised and ruled upon. <i>See</i> Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].</p>
64	9	<p>That attack demonstrated a level of hostility towards the traditional Hawaiian faith that should disqualify the Applicant from receiving a permit. See DOC-179, Exhibit 2 (Motion to Dismiss Conservation Use Application HA-3586; Memorandum in Support).</p>	<p>To the extent that the Temple argues that the purported "attack" is relevant to its claims of desecration, BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues (<i>i.e.</i>, desecration and disqualification) previously raised and ruled upon. <i>See</i> Temple's Proposed Issues [Doc. 265]; Minute Order 19</p>

65	<p>9-10</p> <p>To quote from the Memorandum that the Hearing Officer refused to allow the Temple to file, DOC-356 [(Minute Order No. 33, Order denying Temple of Lono's motion to dismiss out of time [Doc. 179]):</p> <p style="padding-left: 40px;">The University twists that desire for equality into a drive for domination. According to the University, “the Temple seeks state recognition of the “traditional faith of the Hawaiian people.” [DOC179 citing DOC-135 at 14 (emphasis in original)].</p> <p style="padding-left: 40px;">Indeed the Temple seeks State recognition that the Temple is entitled to practice its faith just like any other religion. The University’s own pleading documents that the Temple considers the State to be one actor guilty of trying to suppress the Temple. <u>Id.</u> In its search for mutual respect, the Temple finds “discrimination by the State” as an obstacle. <u>Id.</u>; <u>ibid.</u> at 14, n.36.</p> <p style="padding-left: 40px;">That State recognition does not constitute any special treatment; the Temple seeks the equality under the law guaranteed by the Fourteenth Amendment to the United States Constitution and the freedom to practice its faith as guaranteed by the First Amendment to the United States Constitution.</p> <p style="padding-left: 40px;">Having created a false picture of what the Temple seeks in terms of its right to practice</p>	<p>[Doc. 281]; Temple’s Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple’s Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple’s Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].</p> <p>To the extent that the Temple argues that the purported “attack” is relevant to its claims of desecration, BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners’ and Opposing Intervenor’s claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues (<i>i.e.</i>, desecration and disqualification) previously raised and ruled upon. See Temple’s Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple’s Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple’s Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple’s Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].</p> <p>The Temple’s Motion to File Motion Out of Time [Doc. 179], to which the memorandum cited in this exception was attached as Exhibit 2, was denied by Minute Order No. 33 [Doc. 356]. Therefore, consideration of the memorandum cited in this exception is prohibited by HRS § 91-9(g).</p>
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		<p>without suppression, the University then uses that false picture as a platform to launch an attack on the Temple as a fundamentalist organization.</p> <p>The problem with fundamentalism in religion –any religion –is its intolerance and inability to compromise. Fundamentalist religion when confronted with a conflict between cooperation and conformity to doctrine invariably chooses the latter, regardless of the harm it brings to the society of which it is a part.</p> <p>[DOC-135] at 14 (emphasis in the original).</p> <p>The breathtaking and libelous leap that the University takes from the reality of a faith emerging from more than 120 years of oppression and trying to establish its right to practice without further oppression to the University’s fantasy of the faith as a fundamentalist organization that is intolerant, unable to compromise, chooses conformity to doctrine over cooperation, and cares not if it inflicts harm on society while pursuing its goal of domination is evidence of a malice so deep as to be disqualifying.</p> <p>DOC-179 at 6-7.</p>	
66	10	<p>The Temple challenges each member of the Board of Land and Natural Resources -- Chairperson Suzanne Case, Stanley H. Roehig, Keith “Keone” Downing, James A. Gomes, Thomas Oi, Samuel “Ohu” Glon III, and Christopher Yuen -- to read Exhibit 2 to DOC-179 and decide for yourself whether the Temple should have at least been allowed to file the Motion and Memorandum and receive a ruling on the disqualification issue.</p>	<p>To the extent that the Temple argues that the purported “attack” is relevant to its claims of desecration, BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners’ and Opposing Intervenor’s claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues (<i>i.e.</i>, desecration and disqualification)</p>

	<p>previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (deseccration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].</p> <p>The Temple's Motion to File Motion Out of Time [Doc. 179], to which the memorandum cited in Exception 65 was attached as Exhibit 2, was denied by Minute Order No. 33 [Doc. 356]. Therefore, consideration of the memorandum cited in Exception 65 is prohibited by HRS § 91-9(g).</p>		
<p>To the extent that the Temple argues that the purported "attack" is relevant to its claims of deseccration, BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of deseccration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues (<i>i.e.</i>, deseccration and disqualification) previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (deseccration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc.</p>	<p>The Board may then understand the Temple's argument that the Hearing Officer was biased against the Temple and in favor of the Applicant.</p>	<p>10</p>	<p>67</p>

		<p>265]; Minute Order No. 19 [Doc. 281].</p> <p>Temple's Motion to File Motion Out of Time [Doc. 179], to which the memorandum cited in Exception 65 was attached as Exhibit 2, was denied by Minute Order No. 33 [Doc. 356]. Therefore, consideration of the memorandum cited in Exception 65 is prohibited by HRS § 91-9(g).</p> <p>There is no reliable probative, substantial and credible evidence or testimony to support the Temple's claims of bias.</p>
68	<p>11</p> <p>The University's attack also revealed the underlying goal of destroying the traditional Hawaiian faith's legitimate and constitutionally-protected – Hawaii Constitution, Article XII, §7 – claims to their sacred Mountain tracing back hundreds of years to be replaced with a State-managed, Astronomy-driven continuation of the desecration that began fifty years ago.</p>	<p>To the extent that the Temple argues that the purported "attack" is relevant to its claims of desecration, BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues (<i>i.e.</i>, desecration and disqualification) previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].</p> <p>To the extent that the Temple argues that the purported "attack" is relevant to its claims of</p>
69	<p>11</p> <p>Choosing Mauna Kea despite the foreknowledge provided by the Keystone Center Report, attacking the Temple</p>	

<p>without cause or basis, directing overt hostility toward the traditional Hawaiian faith, and revealing the goal of delegitimizing the tradition faith satisfy any perceived requirement for <i>mens rea</i>.</p>	<p>desecration, BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues (<i>i.e.</i>, desecration and disqualification) previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].</p>
<p>Certainly all the tests for finding that the Applicant is seeking a permit to violate the desecration statute are met.</p>	<p>To the extent that the Temple argues that the purported "attack" is relevant to its claims of desecration, BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues (<i>i.e.</i>, desecration and disqualification) previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc.</p>

			265]; Minute Order No. 19 [Doc. 281].
		H. Having misconstrued the desecration statutes, the HO/A defaults on addressing the Temple's findings.	
71	11	<p>Having claimed to lack ill-intent and that the absence of such intent means the statute does not apply, the HO/A throws the rest of the statute overboard.</p> <p>The foregoing sufficiently addresses Petitioners' and Opposing Interveners' claims of alleged desecration, without the need to make any findings or conclusions regarding any other element of the statute, including whether the summit of Mauna Kea meets any of the definitions under HRS §711--- 1107(1) (a), (b), or (c). Petitioners' and Opposing Interveners' alleged claims are not within BLNR's jurisdiction and are unsupported by any evidence, and therefore, rejected.</p> <p>HO CoL ¶413.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Interveners' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>HO COL 413 is accurate and supported by the evidence in the record.</p>
72	11	<p>The HO/A conclusion that the Temple's "alleged claims" are not within BLNR's jurisdiction is a repeat of the false claim that the issue is adjudication of criminal activity, rather than an application for a permit to break the law.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Interveners' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
73	11	<p>The HO/A conclusion that the Temple's "alleged claims" are unsupported by evidence is curious (and bogus) coming from a Hearing Officer who refuses to consider the</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Interveners'</p>

	<p>Temple's arguments and evidence. HO CoL ¶413 (no "need to make any findings or conclusions regarding any other element of the statute").</p>	<p>claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>HO COL 413 is accurate and supported by the evidence in the record.</p>
<p>74</p>	<p>1. The HO/A position that because a telescope is allowed in a Resource Subzone, the desecration statute does not apply is wrong.</p> <p>The HO/A argues that because: it is undisputed that the project has been proposed for the Astronomy Precinct within the Resource subzone of the Conservation District, in which by law, "astronomy facilities" are expressly permitted – and in fact currently exist, HO CoL ¶410, [i]t is illogical that the University and TIO can be found to have the requisite intent to "mistreat" Mauna Kea by the development of the TMT project.. <i>Id.</i></p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>HO COL 410 is accurate and supported by the evidence in the record.</p>

75	12	<p>The argument that some artificial zone created by a state agency, within which the agency happens to allow astronomy facilities to be built, somehow negates the requirement that any facility not desecrate a sacred site is an example of <i>argumentum deliramentum</i>.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
76	12	<p>The creation of the Conservation District, the Resource Subzone, and an Astronomy Precinct did not repeal or amend the State law prohibiting desecration or in any way diminish the protections provided by that law.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
77	12	<p>That some agency rule allows an astronomy facility to be built in a Resource Zone does not mean that facility can be built there even if the facility violates the State law on desecration.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute</p>

<p>Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>		
<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>	<p>That BLNR adopted a rule that allows "astronomy facilities" in a Resource Subzone of a Conservation District does not alter the nature of the Mauna as a place of worship, a place of burials, or an object of veneration; does not mean that such a project would not cause damage to the Mauna; and does not mean that the proposal to build this telescope is not a cause of public outrage.</p>	<p>78</p>
<p>2. The Applicant's proposal clearly meets the tests for desecration.</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>	<p>After embracing the false analysis requiring "ill-intent" to trigger the statute, the HO/A position is that there is then no need to answer to any of the tests of the statute, i.e.</p>	<p>79</p>

80	12	-- Is Mauna Kea a place of worship?	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
81	12	-- Is Mauna Kea a place of burials?	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc.</p>

82	12	-- Is Mauna Kea an object of veneration?	<p>654]. This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
83	12	-- Will the proposed construction of the TMT damage the Mauna?	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J.</p>

84	12	<p>-- Will the proposed construction of the TMT generate public outrage?</p>	<p>(desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
85	12	<p>Given that the answer to all of these questions is "yes," the only way out for the HO/A is to pretend that there is no need to answer the questions because the motives of the TMT proponents are benign, i.e. lack of "ill-intent."</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute</p>

86	That pretense avoids the obvious conclusion that would flow from answering the questions, i.e. the Applicant is requesting a permit to violate the desecration statute.	Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]. This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL. BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413. This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].
I. The Hearing Officer refused to allow the Temple to hold the Applicant accountable for the disqualifying attack on the Temple of Lono.		
87	The Hearing Officer blocked every attempt by the Temple of Lono to litigate the question of whether the attack on the Temple by the Applicant disqualified the Applicant from receiving a permit. ToL Proposal ¶¶ 128-171, 184-190.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL. This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple of Lono Request for Witness Subpoena

88			For David Lassner, President of the University of Hawaii System [Doc. 438]; Minute Order No. 66 [Doc. 689].
89	13	<p>{Note: The missing transcript references in these latter findings are found in HO Proposal, Appendix A, DOC-438 [Denied by oral ruling (Tr. 1/26/17 at 12:12 – 12:24)]}.</p> <p>{Note: Because the Hearing Officer required findings and conclusions to be prepared and filed prior to the close of the record, ToL Proposal ¶190 states that the Hearing Officer never issued a final order. As reflected in HO Proposal, Appendix A, DOC-438, the Temple's request for subpoena (DOC-438) was denied by Minute Order No. 66 [Doc. 689, filed 6/5/17], i.e. after the deadline for filing findings.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple of Lono Request for Witness Subpoena For David Lassner, President of the University of Hawaii System [Doc. 438]; Minute Order No. 66 [Doc. 689].</p> <p>As the Temple concedes, it did not seek reconsideration of Minute Order No. 66 by filing a motion to reconsider with the five business day deadline provided therein. Accordingly, the Temple waived any challenge to Minute Order No. 66.</p>
90	13	<p>By the time the Minute Order issued, the testimony phase of the proceeding was over, see HO Proposal FoF ¶98, so a motion for reconsideration of the subpoena denial would have been useless – another due process violation.}</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL (note, the Temple does not take exception to the contents of HO FOF 98).</p>

<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple of Lono Request for Witness Subpoena For David Lassner, President of the University of Hawaii System [Doc. 438]; Minute Order No. 66 [Doc. 689].</p> <p>As the Temple concedes, it did not seek reconsideration of Minute Order No. 66 by filing a motion to reconsider with the five business day deadline provided therein. Accordingly, the Temple waived any challenge to Minute Order No. 66.</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple of Lono Request for Witness Subpoena For David Lassner, President of the University of Hawaii System [Doc. 438]; Minute Order No. 66 [Doc. 689].</p> <p>As the Temple concedes, it did not seek reconsideration of Minute Order No. 66 by filing a motion to reconsider with the five business day deadline provided therein. Accordingly, the</p>	<p>Alternatively, had the subpoena been granted after waiting so long for a ruling, the Hearing Officer would have had to reopen the hearings and provide additional time for findings – the dysfunctional result of a dysfunctional process.</p>	<p>91</p> <p>13</p>

92		<p>The response by the Hearing Officer preventing the Temple from being heard was a turning point in the proceeding for the Temple. The Hearing Officer's determination to protect the Applicant and deny due process to the Temple demonstrated an incurable bias that infected the entire proceeding.</p>	<p>Temple waived any challenge to Minute Order No. 66.</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple of Lono Request for Witness Subpoena For David Lassner, President of the University of Hawaii System [Doc. 438]; Minute Order No. 66 [Doc. 689].</p> <p>As the Temple concedes, it did not seek reconsideration of Minute Order No. 66 by filing a motion to reconsider with the five business day deadline provided therein. Accordingly, the Temple waived any challenge to Minute Order No. 66.</p> <p>It is well established that an adverse ruling does not evidence bias. See <i>Jou v. Dai-Tokyo Royal State Ins. Co.</i>, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); <i>James W. Glover, Ltd. v. Fong</i>, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification").</p> <p>This exception does not comply with Minute</p>
93	13	<p>The Temple did attempt to cure the infection by requesting</p>	<p>This exception does not comply with Minute</p>

	<p>the Hearing Officer recuse herself. Ibid. ¶ 149, 151.</p>	<p>Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Recuse Hearing Officer [Doc. 262]; UH Hilo's Opp. to Temple's Mot. to Recuse Hearing Officer [Doc. 434]; Minute Order No. 46 [Doc. 595].</p>
94	<p>The Hearing Officer denied the motion. Ibid. ¶ 150.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Recuse Hearing Officer [Doc. 262]; UH Hilo's Opp. to Temple's Mot. to Recuse Hearing Officer [Doc. 434]; Minute Order No. 46 [Doc. 595].</p> <p>It is well established that an adverse ruling does not evidence bias. See <i>Jou v. Dai-Tokyo Royal State Ins. Co.</i>, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); <i>James W. Glover, Ltd. v. Fong</i>, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification").</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and</p>
95	<p>That bias by the Hearing Officer from the beginning is one reason that the Temple takes exception to the entire HO</p>	

		<p>Proposal.</p>	<p>therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Recuse Hearing Officer [Doc. 262]; UH Hilo's Opp. to Temple's Mot. to Recuse Hearing Officer [Doc. 434]; Minute Order No. 46 [Doc. 595].</p> <p>It is well established that an adverse ruling does not evidence bias. See <i>Jou v. Dai-Tokyo Royal State Ins. Co.</i>, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); <i>James W. Glover, Ltd. v. Fong</i>, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification").</p>
96	13	<p>J. The Hearing Officer Improperly failed to address the jurisdictional issue.</p> <p>The Temple filed a motion seeking to terminate this proceeding based on the application at issue being a request for permission to violate the law. DOC-264 filed September 17, 2016.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See</p>

<p>Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>The Hearing Officer was under no obligation to take up untimely motions on issues not properly before the Hearing Officer. See Minute Order No. 13 (setting deadlines for prehearing motions) [Doc. 115]; Minute Order No. 19 (setting the issues) [Doc. 281]; see <i>also</i> Minute Order No. 39 at 3 [Doc. 406] ("No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety?").</p>	<p>The Hearing Officer denied the motion seven and a half months later. DOC-654 filed May 27, 2017.</p>	<p>97</p>

98	14	<p>The entire legal discussion of the basis for that denial consisted of the following:</p> <p>This Motion, filed on September 7, 2015, is a dispositive pre-hearing motion that clearly falls outside the filing deadline of July 18, 2016 set by the Minute Order.</p> <p>...</p> <p>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 This exception does not comply with Minute Order No. 103 [Doc. 784] and improperly seeks reconsideration of issues previously raised and ruled upon. 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.</p> <p><u>Ibid</u>, at 4.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
99	14	<p>The Hearing Officer misstates the issue as whether she has jurisdiction over allegations of criminal behavior. As discussed earlier, the issue is whether the agency has jurisdiction to consider an application for a permit to break the law.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See</p>

<p>Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>			<p>An agency cannot consider an application for permission to break the law.</p>	<p>100</p>
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>				<p>101</p>
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>		<p>The Temple motion was dispositive because granting the motion would mean that the agency never had jurisdiction over the permit application in the first place and that the application should be dismissed.</p>		<p>101</p>
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration</p>				<p>101</p>

<p>of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>			
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>	<p>The principles of jurisdiction for this agency proceeding are the same as the principles for any adjudicatory or quasi-adjudicatory body. One of those principles is that a jurisdictional challenge may be made at any time.</p>	<p>14</p>	<p>102</p>
<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p>			
<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>			
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>	<p>That the Temple made its dispositive motion outside the time set by the Hearing Officer for pre-hearing motions is irrelevant. A jurisdictional challenge is always in order because if there is no jurisdiction there is no basis for the proceeding.</p>	<p>14</p>	<p>103</p>
<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p>			

		<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
104	14	<p>A motion challenging jurisdiction required the agency to promptly address that issue prior to taking any further actions.</p> <p>"When it clearly appears that the court lacks jurisdiction, the court has no authority to reach the merits. In such a situation the action should be dismissed for want of jurisdiction."</p> <p><i>Melo v. US</i>, 505 F2d 1026, 1030 (8th Cir. 1974).</p>
		<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p>
		<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
105	15	<p>As Melo states, the Court obligation to address such a challenge is mandatory. See also <i>Joyce v. U.S.</i>, 474 F.2d 215 (3rd Cir. 1973) ("Where there is no jurisdiction over the subject matter, there is, as well, no discretion to ignore that lack of jurisdiction." [citation omitted]).</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p>

<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>	<p>There is no hiatus after the filing of a jurisdictional challenge in which the Court can proceed to rule on other pending motions before addressing the jurisdictional issue. That is because any action by the Court when the Court lacked jurisdiction would be void.</p>	<p>15</p>
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO</p>	<p>In this proceeding, the Hearing Officer ignored the Temple's jurisdictional challenge for seven and a half months while continuing to conduct the proceeding, including continuing to rule on motions, testimony, exhibits, and administrative matters.</p>	<p>15</p>

<p>COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>The Hearing Officer was under no obligation to take up untimely motions on issues not properly before the Hearing Officer. See Minute Order No. 13 (setting deadlines for prehearing motions) [Doc. 115]; Minute Order No. 19 (setting the issues) [Doc. 281]; see also Minute Order No. 39 at 3 [Doc. 406] ("No authority mandates a deadline for issuing orders on motions in contested cases.... The fact that the Hearing Officer has not yet ruled on two motions is not evidence of an appearance of impropriety.")</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See</p>	<p>Then the Hearing Officer ruled that the filing of the Temple's motion challenging jurisdiction was untimely or, if not untimely, "failed to carry [the Temple's] burden that it is entitled to judgment as a matter of law and/or any material facts supporting the Motion are undisputed." DOC-654 at 4.</p>	<p>108</p> <p>15</p>

109		<p>The first ruling is contrary to the principle that a jurisdictional challenge can be raised at any time.</p>	<p>Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
110	15	<p>The Hearing Officer says the issue she was addressing was whether she had jurisdiction to decide a criminal prosecution. DOC-654 at 4. Having misconstrued the issue in the first place, the ruling that the Temple failed to carry its burden on an issue not before the Hearing Officer is a meaningless ruling.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception and improperly seeks</p>

111			<p>reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
112	15	<p>The second ruling also has the fundamental flaw that the decision was not based on litigation of the issues. The Hearing Officer never scheduled the Temple's motion for briefing, so there was no opportunity for all parties to be heard or a record to be created.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>The Temple had a full and fair opportunity to be heard on this issue. See Minute Order 53 [Doc. 654] (noting the filing of the Motion and related documents in the record).</p>
K. The Board has avoided addressing the jurisdictional issue as well.			
1.1.2	15	<p>The Temple presented the desecration questions to the Board long ago. DOC-516 (Temple of Lono Motion to Board of Land and Natural Resources to dismiss HA-3568) filed March 19, 2017. The motion argued that the Board lacked jurisdiction to consider an application for a permit</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>

		to break the law.		BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.
113	15	Despite the jurisdictional nature of the challenge, the Board decided to wait for the recommendations from the Hearing Officer before addressing the Temple's motion. DOC-751 (Minute Order No. 87, Order denying without prejudice Temple of Lono's motion to Board of Land and Natural Resources to dismiss HA-3568) filed June 23, 2017.		<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>
114	16	That decision means that the Temple (and any other party having an interest in whether the Board ever had jurisdiction over the application at issue) will never have had the opportunity to fully litigate the issue.		<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate</p>

<p>violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>			
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>	<p>The Board has no record of such litigation during the hearing process to rely upon and has not developed its own record.</p>	<p>16</p>	<p>115</p>
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it</p>	<p>All that the Board has is the Temple's motion, opposition by the Applicant in the form pleadings never substantively ruled on and proposed findings and conclusions, and the cut and paste presentation on the issue found in the Hearing Officer's Proposal.</p>	<p>16</p>	<p>116</p>

117			<p>did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>
118	16	<p>Missing are: (1) an opportunity for other parties to participate in that litigation, (2) full briefing of the issues, (3) a reasoned explanation as to why the application to break the law should not be dismissed, and (4) rulings on each of the findings submitted by the Temple on this issue,</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>
<p>L. The Hearing Officer and Board avoidance of the desecration issue has created a due process problem.</p>			
118	16	<p>Had the Hearing Officer granted the Temple's Motion on desecration in September 2016, the proceeding would have terminated prior to reaching the evidentiary stage.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate</p>

<p>violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>			
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>	<p>Instead, the Hearing Officer waited until May 27, 2017 to rule, by which time there had been 44 days of hearings and 71 witnesses.</p>		
<p>This exception does not comply with Minute</p>	<p>To grant the Temple's motion at that point would have</p>	<p>16</p>	<p>120</p>

	<p>meant dismissal of the case without a decision because the agency never had jurisdiction. The pressure to deny the motion was immense and denied the Temple's right to a fair and impartial hearing.</p>	<p>Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>
<p>121</p>	<p>When the Temple filed its motion to dismiss based on the desecration statute at the Board level, the Temple informed the Board that the jurisdictional challenge had been pending for some time. DOC-516 at 7, n. 7.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J.</p>

		<p>(desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>
122	16	<p>The Board chose to join in delaying a decision by dismissing the Temple's motion to dismiss and to await the proposed resolution of the desecration issue by the Hearing Officer. DOC-751</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>
123	16	<p>The Board and the Hearing Officer have delayed addressing a jurisdictional challenge until a decision on the issue can no longer be made objectively.</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p>

124			<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>
125	16	<p>The proceeding continued despite the unresolved jurisdictional challenge.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>
125	17	<p>If the Board now took up the desecration issue, despite the absence of an adequate record to review from the proceeding below, the Board would be faced with a choice of granting the motion and essentially vacating the entire proceeding to date or denying the motion.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>

<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p>	<p>The Board cannot make an objective decision in the face of a fait accompli allowed by the Hearing Officer, i.e. the Board cannot ignore the voluminous record of the proceeding and make an objective decision on whether the proceeding should have been held in the first place.</p>	<p>17</p>

127	17	That lack of objectivity at the Board level denies the Temple's right to a meaningful hearing.	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Interveners' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. to Board of Land and Natural Resources to dismiss HA-3568 [Doc. 516]; Minute Order 87 [Doc. 751].</p> <p>The Temple's claims regarding a lack of objectivity on the part of the BLNR and/or the Hearing Officer are not supported by reliable probative, substantial and credible evidence or testimony in the record.</p>
128	17	<p>M. The Hearing Officer's Proposal systematically purged Temple findings.</p> <p>The protocol adopted by the Hearing Officer to "reject" proposed findings of fact en masse without identifying the specific finding or providing the specific reason a particular finding was rejected, HO Proposal at page 7, provided the Hearing Officer cover for eliminating consideration of many essential parts of the Temple's case.</p>	<p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App.</p>

		<p>633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p> <p>The Temple's claims regarding the Hearing Officer's motives are not supported by reliable probative, substantial and credible evidence or testimony in the record.</p>
129	17	<p>This systematic purging of the Temple's case is final confirmation of the Hearing Officer's bias against the Temple and in favor of the Applicant.</p>
		<p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of</p>

			<p>fact.” <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party’s proposed findings is not required by HRS § 91-12). While the Temple’s exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple’s testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO’s FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. to Board of Land and Natural Resources to Remand Hearing Officer’s Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p> <p>The Temple’s claims of the Hearing Officer being biased against the Temple (or in favor of UH Hilo/TIO) are not credible and are not supported by reliable probative, substantial and credible evidence or testimony in the record.</p>
	<p>1. The Hearing Officer’s Proposal ignores the Keystone Center Report.</p>	<p>17</p>	<p>The Temple set forth at some length the Keystone Center</p>
<p>130</p>			<p>This exception does not comply with Minute</p>

		<p>Report prepared for the Applicant by a consultant that evaluated the risk of selecting Mauna Kea as the site for the TMT. ToL Proposal ¶¶117-119.</p>	<p>Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple relies upon the Keystone Center Report to support its claims of desecration. BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413. Therefore, reference to the Keystone Center Report was properly excluded from the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
131	17	<p>The Report itself is nowhere to be found in the HO Proposal.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple relies upon the Keystone Center Report to support its claims of desecration. BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO</p>

<p>COL 399-413. Therefore, reference to the Keystone Center Report was properly excluded from the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple relies upon the Keystone Center Report to support its claims of desecration. BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Interveners' claim of desecration fails as a matter of law. HO COL 399-413. Therefore, the Temple's findings on Keystone Center Report were properly excluded from the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J.</p>	<p>The Temple's findings on the Report are no where [sic] to be found in the HO Proposal.</p>	<p>132</p> <p>17</p>

133	17	<p>There are no rulings on the Temple's findings in the HO Proposal.</p>	<p>(desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>The Temple relies upon the Keystone Center Report to support its claims of desecration. BLNR does not have jurisdiction to adjudicate</p>
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134		<p>violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413. Therefore, the Temple's findings on Keystone Center Report were properly excluded from the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple relies upon the Keystone Center Report to support its claims of desecration. BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's</p>
17	The Temple takes exception to the Hearing Officer refusing to address the case presented by the Temple.	

	<p>claim of desecration fails as a matter of law. HO COL 399-413. Therefore, reference to the Keystone Center Report, and the Temple's findings thereon, were properly excluded from the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>	
	<p align="center">2. The Hearing Officer's Proposal ignores the Applicant's bigoted attack on the Temple.</p>	
135	17-18	<p>The Temple also presented findings that dealt at some length with the Applicant's attack on the Temple, the implications of that attack for Applicant's qualifications to receive the permit, and the refusal of the Hearing Officer to allow the Temple to be heard on this issue. ToL Proposal ¶¶ 128-171; see ¶¶ 267-269.</p> <p>To the extent that the Temple argues that the purported "attack" is relevant to its claims of desecration, BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues (<i>i.e.</i>, desecration and disqualification) previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J.</p>

<p>(desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>To the extent that the Temple argues that the purported "attack" is relevant to its claims of desecration, BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413. Therefore, reference to the "attack" was properly excluded from the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.</p> <p>This exception improperly seeks reconsideration of issues (<i>i.e.</i>, desecration and disqualification) previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].</p>	<p>There is no discussion of the attack on the Temple found in the HO Proposal.</p>	
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and</p>	<p>The Temple's findings on this issue are nowhere to be found in the HO Proposal.</p>	

<p>therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>		
<p>To the extent that the Temple argues that the purported "attack" is relevant to its claims of desecration, BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413. Therefore, the Temple's findings on the "attack" were properly excluded from the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.</p>		
<p>This exception improperly seeks reconsideration of issues (<i>i.e.</i>, desecration and disqualification) previously raised and ruled upon. <i>See</i> Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>	<p>There are no rulings in the HO Proposal on each of the Temple's proposed findings regarding the attack.</p>	<p>138</p>
<p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is</p>		<p>18</p>

clear that “[i]t is not indispensable that there be a separate ruling on each proposed finding of fact.” *Outdoor Circle v. Harold K.L. Castle Trust Estate*, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also *Mitchell v. BWK Joint Venture*, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party’s proposed findings is not required by HRS § 91-12). While the Temple’s exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple’s testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO’s FOF/COL.

This exception improperly seeks reconsideration of issues (*i.e.*, desecration and disqualification) previously raised and ruled upon. See Temple’s Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple’s Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple’s Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple’s Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].

This exception improperly seeks reconsideration of issues previously raised and ruled upon. See

139	18	<p>There is one reference to the pleading containing the initial attack found in the HO Proposal at Appendix A, DOC-78 (Referencing DOC-135), which simply identifies relevant pleadings without providing any discussion.</p>	<p>Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
			<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castile Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p>

<p>This exception improperly seeks reconsideration of issues (<i>i.e.</i>, desecration and disqualification) previously raised and ruled upon. <i>See</i> Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654]; Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].</p>			
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>	<p>The Temple takes exception to the Hearing Officer refusing to address the case presented by the Temple.</p>	<p>18</p>	<p>140</p>
<p>To the extent that the Temple argues that the purported "attack" is relevant to its claims of desecration, BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413. Therefore, reference to the "attack," and the Temple's findings thereon, were properly excluded from the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.</p>			<p>This exception improperly seeks reconsideration of issues (<i>i.e.</i>, desecration and disqualification) previously raised and ruled upon. <i>See</i> Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc.</p>

			654]; Temple's Mot. for Summ. J. (Disqualification) [Doc. 263]; Minute Order No. 47 [Doc. 609]; Temple's Proposed Issues [Doc. 265]; Minute Order No. 19 [Doc. 281].
3. The Hearing Officer Ignored the numerous due process violations presented in the Temple's findings.			
141	18	The Temple also made an extensive presentation on the due process violations that occurred in the proceeding. See ToL Proposal ¶¶ 10-35 (general due process considerations related to the Supreme Court vacatur of the previously granted permit), ¶¶ 36-56 (due process issues related to the nature of this proceeding), ¶¶ 174-183 (specific due process violations), ¶ 193-198 (motions not ruled upon, ¶ 199 (refusal to issue Minute Order), ¶¶ 200-245 (numerous due process violations during the proceeding).	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to: (1) identify any specific HO FOF or COL; and (2) state the grounds for its exceptions to the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
142	18	In response to the innumerable due process issues raised in the Temple findings, the Hearing Officer had nothing to say.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to: (1) identify any specific HO FOF or COL; and (2) state the grounds for its exceptions to the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
143	18	The term "due process" appears five times in the Hearing Officer's 305 page Proposal: CoL ¶ 44 (generic claim due process provided to all parties); ¶ 65 (twice re limiting cross-examination); ¶ 113 (statement of general principle); Appendix A, DOC-338 (pleading caption). None of these mentions address the Temple findings on the due process issue, other than the issue of limiting cross-examination.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to state the grounds for its exceptions to the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
144	18	The HO Proposal completely ignored the plethora of additional due process violations presented by the Temple.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to: (1) identify any specific HO FOF or COL;

		and (2) state the grounds for its exceptions to the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
145	The remaining due process issues raised by the Temple are nowhere to be found in the HO Proposal.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to: (1) identify any specific HO FOF or COL; and (2) state the grounds for its exceptions to the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
146	The Temple's findings on these due process issues are nowhere to be found in the HO Proposal.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to: (1) identify any specific HO FOF or COL; and (2) state the grounds for its exceptions to the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
147	Rulings on the Temple's findings on these due process issues are nowhere to be found in the HO Proposal.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to: (1) identify any specific HO FOF or COL; and (2) state the grounds for its exceptions to the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
		HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i> , 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); <i>see also</i>

			<p><i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to: (1) identify any specific HO FOF or COL; and (2) state the grounds for its exceptions to the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.</p>
148	19	<p>The Temple takes exception to the Hearing Officer refusing to address the case presented by the Temple.</p>	
<p>4. The Hearing Officer ignored the Temple's findings on desecration.</p>			
149	19	<p>The HO/A claim that the Applicant has no ill-intent and, therefore, the proposal is not subject to the desecration statute. See HO Proposal CoL ¶¶402-413.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Interveners'</p>

			<p>claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
150	19	<p>Based on that factual fallacy, the HO/A argue that there is no need to address any of the other elements of the desecration statute. Ibid. ¶413.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
151	19	<p>The HO Proposal fails to address the possibility that the Hearing Officer is wrong on the law. That failure means that the Hearing Officer refuses to consider the Temple's entire presentation of findings related to the application of the desecration statute. ToL ¶¶ 1-9, ¶¶ 57-72, ¶¶267-269.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>

152	19	<p>The discussion in the HO Proposal regarding the desecration issue is limited to the presentation by the Applicant. There is no discussion of the Temple's alternative case.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413. Therefore, reference to the Temple's "alternative case" was properly excluded from Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
153	19	<p>The Temple's findings on the desecration issue are nowhere to be found in the HO Proposal.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413. Therefore, the Temple's findings on the desecration issue were properly excluded from Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
154	19	<p>Rulings on the Temple's findings on the desecration issue</p>	<p>BLNR does not have jurisdiction to adjudicate</p>

are nowhere to be found in the HO Proposal.

violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Interveners' claim of desecration fails as a matter of law. HO COL 399-413.

This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].

HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." *Outdoor Circle v. Harold K.L. Castle Trust Estate*, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also *Mitchell v. BWK Joint Venture*, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's

			<p>FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
155	19	<p>The Temple takes exception to the Hearing Officer refusing to address the case presented by the Temple.</p>	<p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413. Therefore, the Temple's findings on the desecration issue were properly excluded from Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
156	19	<p>N. The Hearing Officer's refusal to address the Temple's case is another due process violation,</p> <p>Just in the four areas – the Keystone Center Report, the Applicant's attack on the Temple, the due process violations, and the desecration issue – the Hearing Officer supposedly "rejected" at least 200 Temple findings and sub-findings because those findings do not appear in the HO Proposal.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>

The Temple is provided with no ruling on each of those findings as to why they were rejected.

This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.

HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that “[i]t is not indispensable that there be a separate ruling on each proposed finding of fact.” *Outdoor Circle v. Harold K.L. Castle Trust Estate*, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also *Mitchell v. BWK Joint Venture*, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party’s proposed findings is not required by HRS § 91-12). While the Temple’s exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple’s testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO’s FOF/COL.

This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. to Board of Land and Natural Resources to Remand Hearing Officer’s Findings of Fact and Conclusions of Law and

<p>Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		<p>158</p>
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that “[i]t is not indispensable that there be a separate ruling on each proposed finding of fact.” <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party’s proposed findings is not required by HRS § 91-12). While the Temple’s exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple’s testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO’s FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. to Board of Land and Natural</p>	<p>The Temple is, therefore, unable to take exception to the innumerable rulings supposedly rejecting the Temple’s proposed findings on issues essential to the Temple’s case.</p>	<p>19</p>

159	20	<p>The Hearing Officer has achieved her goal of eliminating the Temple's effective participation in this proceeding by simply refusing to acknowledge the Temple's findings and refusing to provide rulings on those findings.</p>	<p>Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
			<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration</p>

<p>of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p> <p>The Temple's claims regarding the Hearing Officer's motives and goals are not supported by reliable probative, substantial and credible evidence or testimony in the record.</p>			
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's</p>	<p>This clear violation of HRS §91-12 is a fundamental and fatal flaw in the HO Proposal.</p>	<p>20</p>	<p>160</p>

			<p>testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
161	20	<p>Foreclosing the Temple's ability to file exceptions is a fundamental due process violation that adds to the mountain of such violations already present in this proceeding.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received</p>

<p>into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
<p>The Temple's claims of the Hearing Officer being biased against the Temple (or in favor of UH Hilo/TIO) are not credible and are not supported by reliable probative, substantial and credible evidence or testimony in the record.</p> <p>It is well established that an adverse ruling does not evidence bias. See <i>Jou v. Dai-Tokyo Royal State Ins. Co.</i>, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); <i>James W. Glover, Ltd. v. Fong</i>, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification").</p> <p>This exception improperly seeks reconsideration</p>	<p>O. The Hearing Officer's bias tainted the entire proceeding.</p> <p>As discussed extensively above, the Hearing Officer demonstrated a clear bias against the Temple and in favor of the TMT. The only time the Hearing Officer addresses those objections to her presiding, she pronounces those objections meritless and limited to objections to adverse rulings.</p> <p>Throughout the course of the contested case hearing, accusations of bias and prejudice were freely advanced by Petitioners and Opposing Interveners. Adverse rulings, without more, are insufficient to establish bias or prejudice of an administrative officer. See <i>Peters v. Jamieson</i>, 48 Hawai'i 247, 264, 397 P.2d 575, 586 (1964) ("We adhere to the rule that mere erroneous or adverse rulings by the trial judge do not spell bias or prejudice and cannot be made the basis for disqualification.")</p>	<p>162</p> <p>20</p>

	HO Proposal CoL ¶43.		of issues previously raised and ruled upon. See Temple's Mot. to Recuse Hearing Officer [Doc. 262]; UH Hilo's Opp. to Temple's Mot. to Recuse Hearing Officer [Doc. 434]; Minute Order No. 46 [Doc. 595].
163	20	The Hearing Officer even reveals her bias when attributing bias to others. In discussing witnesses who have reached the conclusion that construction of the telescope is not a good idea, the Hearing Officer finds their professional opinion unpersuasive or tainted by their having reached that conclusion. See e.g. HO Proposal FoF ¶665, 970.	The Temple's claims of the Hearing Officer being biased against the Temple (or in favor of UHH/TIO) are not credible and are not supported by reliable probative, substantial and credible evidence or testimony in the record. As the finder of fact, it is the Hearing Officer's duty to hear all evidence and to make determinations regarding the credibility of the evidence presented. This includes the duty to assign the weight and value of evidence, whether it be credible, not credible, or more or less credible than other evidence. The Temple attempts improperly to portray the Hearing Officer's credibility determinations as evidence of bias. This argument ignores the reality that it is squarely the Hearing Officer's duty to make such determinations. It is undisputed that determinations of credibility are best made by the presiding judge or jury in a criminal or civil trial and will not be disturbed on appeal. See <i>State v. Buch</i> , 83 Hawaii 308, 321, 926 P.2d 599, 612 (1996) ("[I]t is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the providence of the [trier of fact].") The underlying principle being that "the fact finder is uniquely qualified to evaluate the

<p>credibility of witnesses and to weigh the evidence.” <i>Wilton v. State</i>, 116 Hawaii 106, 119, 170 P.3d 357, 370 (2007) (citation omitted).</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. to Recuse Hearing Officer [Doc. 262]; UH Hilo’s Opp. to Temple’s Mot. to Recuse Hearing Officer [Doc. 434]; Minute Order No. 46 [Doc. 595].</p>			
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple’s claims of the Hearing Officer being biased against the Temple (or in favor of UHH/TIO) are not credible and are not supported by reliable probative, substantial and credible evidence or testimony in the record.</p> <p>As the finder of fact, it is the Hearing Officer’s duty to hear all evidence and to make determinations regarding the credibility of the evidence presented. This includes the duty to assign the weight and value of evidence, whether it be credible, not credible, or more or less credible than other evidence. The Temple attempts improperly to portray the Hearing Officer’s credibility determinations as evidence of bias. This argument ignores the reality that it is squarely the Hearing Officer’s duty to make such determinations. It is undisputed that</p>	<p>There is no evidence of the Hearing Officer finding proponents of the project to lack objectivity because they favor the project.</p>	20	164

			<p>determinations of credibility are best made by the presiding judge or jury in a criminal or civil trial and will not be disturbed on appeal. See <i>State v. Buch</i>, 83 Hawaii 308, 321, 926 P.2d 599, 612 (1996) (“[I]t is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the [trier of fact].”) The underlying principle being that “the fact finder is uniquely qualified to evaluate the credibility of witnesses and to weigh the evidence.” <i>Wilton v. State</i>, 116 Hawaii 106, 119, 170 P.3d 357, 370 (2007) (citation omitted).</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. to Recuse Hearing Officer [Doc. 262]; UH Hilo’s Opp. to Temple’s Mot. to Recuse Hearing Officer [Doc. 434]; Minute Order No. 46 [Doc. 595].</p>
165	20	Indeed, objections to bias were heard “[t]hroughout the course of the contested case,” precisely because evidence of bias ran rampant.	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple’s claims of the Hearing Officer being biased against the Temple (or in favor of UHH/TIO) are not credible and are not supported by reliable probative, substantial and credible evidence or testimony in the record.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See</p>

166	20	<p>The Temple takes an overall exception to the HO Proposal in its entirety as the product of repeatedly demonstrated bias against the opponents of the project and in favor of the project itself.</p>	<p>Temple's Mot. to Recuse Hearing Officer [Doc. 262]; UH Hilo's Opp. to Temple's Mot. to Recuse Hearing Officer [Doc. 434]; Minute Order No. 46 [Doc. 595].</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple's claims of the Hearing Officer being biased against the Temple (or in favor of UHH/TIO) are not credible and are not supported by reliable probative, substantial and credible evidence or testimony in the record.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Recuse Hearing Officer [Doc. 262]; UH Hilo's Opp. to Temple's Mot. to Recuse Hearing Officer [Doc. 434]; Minute Order No. 46 [Doc. 595].</p>
167	20-21	<p>As such, the Board cannot rely upon the HO Proposal or the record created under this presiding officer as a basis for the Board's consideration of the permit application.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple's claims of the Hearing Officer being biased against the Temple (or in favor of UHH/TIO) are not credible and are not supported by reliable probative, substantial and credible evidence or testimony in the record.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Recuse Hearing Officer [Doc. 262]; UH Hilo's Opp. to Temple's Mot. to Recuse Hearing Officer [Doc. 434]; Minute Order No. 46 [Doc. 595].</p>

			<p>of issues previously raised and ruled upon. See Temple's Mot. to Recuse Hearing Officer [Doc. 262]; UH Hilo's Opp. to Temple's Mot. to Recuse Hearing Officer [Doc. 434]; Minute Order No. 46 [Doc. 595].</p>
<p>P. The faith issue is at the heart of this proceeding.</p>			
168	21	<p>The desecration discussion above raises fundamental questions underlying this case.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
169	21	<p>Do Native Hawaiians have a right to declare a site sacred? Or more precisely, if Native Hawaiians have considered a site sacred for hundreds of years is that sacred space protected under the State's desecration statute?</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p>

<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>	<p>The State's Constitution, Article XII, §7?</p>	<p>21</p>
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO</p>	<p>The United States Constitution, Amendments 1 and 14?</p>	<p>21</p>

			<p>COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
172	21	<p>If so, does the law on desecration apply to that site in the same way it would apply to a sacred site declared by any other religion, faith, or spiritual practice?</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Interveners' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
173	21	<p>If not, why does the Native Hawaiian faith have less freedom to determine a sacred site and less protection for its sacred sites than other religions, faiths, or spiritual practices have for their sacred sites, particularly when Native Hawaiian spiritual practices are specifically protected by the Hawaiian Constitution, Article XII, §7, as well as the United States Constitution, First and Fourteenth Amendments?</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Interveners'</p>

174	21	<p>claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>	
175	21	<p>Related questions are:</p> <p>Can an agency of the State of Hawai'i create a special district and then declare that the laws of the state do not apply in that district? More precisely, can the State of Hawai'i adding "astronomy facilities" to the list of allowable land use in a State-created Resource Subzone eliminate the requirement that the construction of the facility not violate the States's desecration statute?</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenors' claim of desecration fails as a matter of law. HO COL 399-413.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].</p>
176	21	<p>Can the State of Hawai'i refuse to grant the protections of a general law -- meant to protect all religious, faith, and spiritual practices and institutions -- to a particular faith?</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>BLNR does not have jurisdiction to adjudicate</p>

			violations of the Hawaii Penal Code. Even if it did, Petitioners' and Opposing Intervenor's claim of desecration fails as a matter of law. HO COL 399-413. This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281]; Temple's Mot. Summ. J. (desecration) [Doc. 264]; Minute Order 53 [Doc. 654].
III. CONCLUSION			
177	21	The educational value of this proceeding is immeasurable. People all over the world had an opportunity to learn about Hawaiian spirituality and about the continued oppression of the Hawaiian people.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.
178	21	The Hearing Officer's refusal to allow witnesses to testify about the illegal annexation of the Kingdom and the implications of that illegality for the determination of the true title holder to the land where TMT wants to build prevented a comprehensive explication of the history.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL. This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Proposed Issues [Doc. 265]; Minute Order 19 [Doc. 281].
179	22	As far as the legality of this proceeding, the Temple offered its view that impartiality was impossible because the Hearing Officer knew that the agency had previously approved the permit. ToL ¶¶10-35.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL. The Temple's claims regarding a lack of impartiality in these proceedings are not supported by reliable probative, substantial and

180		22	<p>The influence of that prior decision appears to have created a bias on the part of the Hearing Officer, just as the Temple analysis predicted. <i>Id.</i></p>	<p>credible evidence or testimony in the record.</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple's claims of the Hearing Officer being biased against the Temple (or in favor of UHH/TIO) are not credible and are not supported by reliable probative, substantial and credible evidence or testimony in the record.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. <i>See</i> Temple's Mot. to Recuse Hearing Officer [Doc. 262]; UH Hilo's Opp. to Temple's Mot. to Recuse Hearing Officer [Doc. 434]; Minute Order No. 46 [Doc. 595].</p>
181		22	<p>The process also appears to have overwhelmed the Hearing Officer, leading to a record replete with failures to perform the required functions, legal errors, prejudicial rulings, due process violations, incomprehensible and irrational processes, and other flaws that are beyond salvaging.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple's claims regarding the Hearing Officer being "overwhelmed" in these proceedings are not credible and are not supported by reliable probative, substantial and credible evidence or testimony in the record.</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>
182		22	<p>The Temple is resubmitting its motion to dismiss that the Board earlier denied without prejudice to re-filing.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>

		This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Dismiss HA-3568; Minute Order No. 87 [Doc. 751].
183	22 The Board can address the Temple's motion to dismiss now, DOC-516, and grant that motion to save all parties the time and expense of going through a judicial process where the outcome is so easily predicted. See Temple of Lono Resubmission of Motion to Dismiss filed August 15, 2017.	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL. This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Dismiss HA-3568; Minute Order No. 87 [Doc. 751].
ADDENDUM		
184	22 On August 13, 2017, the Temple of Lono filed its "Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order."	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.
185	22 On August 15, 2017, the Applicant filed The University of Hawai'i at Hilo's Opposition to Temple of Lono's Motion to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact, Conclusions of Law and Decision and Order. (Hereinafter "App. Opp. Remand")	This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL. This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.
185 [sic]	22 The Applicant argues that the Hearing Officer is not	This exception does not comply with Minute

required to rule upon every finding of fact submitted by a party because:

Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.

HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that “[i]t is not indispensable that there be a separate ruling on each proposed finding of fact.” *Outdoor Circle v. Harold K.L. Castle Trust Estate*, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); *see also Mitchell v. BWK Joint Venture*, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party’s proposed findings is not required by HRS § 91-12). While the Temple’s exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple’s testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO’s FOF/COL.

This exception improperly seeks reconsideration of issues previously raised and ruled upon. *See Temple’s Mot. to Board of Land and Natural Resources to Remand Hearing Officer’s Findings of Fact and Conclusions of Law and Decision and Order*, filed August 13, 2017;

186	22	<p>Minute Order 105, filed August 20, 2017.</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that “[i]t is not indispensable that there be a separate ruling on each proposed finding of fact.” <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party’s proposed findings is not required by HRS § 91-12). While the Temple’s exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple’s testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO’s FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. to Board of Land and Natural Resources to Remand Hearing Officer’s</p>
<p>There are too many findings in this proceeding to require the Hearing Officer to address them all.</p>		

<p>Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
<p>Minute Order 105 speaks for itself. This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>	<p>The rule requiring that all findings submitted must be ruled upon applies to the decision-maker, not a Hearing Officer</p>	<p>187</p>
<p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that “[i]t is not indispensable that there be a separate ruling on each proposed finding of fact.” <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party’s proposed findings is not required by HRS § 91-12). While the Temple’s exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple’s testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO’s FOF/COL.</p>		<p>22</p>

<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>	<p>The voluminous findings submitted in this proceeding are a direct product of the outrage predicted by the Keystone Center Report. See <i>infra</i> ¶¶ 54-62, 130-134.</p>	
<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>	<p>To deny the parties a fair hearing on their findings would only confirm the intent of the Board to approve the TMT, no matter what the law says.</p>	

			<p>542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p> <p>The Temple's claims regarding the BLNR's "intent" in these proceedings are not supported by reliable probative, substantial and credible evidence or testimony in the record.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
190	23	<p>From an aroused community, emerged 25 parties willing to engage in what was certain to be a lengthy and costly proceeding. HO Proposal FoF ¶¶ 1-28 (not counting the Applicant and the Applicant's allies TIO and PUEO.)</p>	

191	23	<p>While the record will reflect that some of those petitioner/interveners fell by the wayside under the pressures of participating in the pre-hearing process and 44 days of hearings, many remained at great personal cost.</p>	<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
192	23	<p>Those that remained put on their cases and filed their 5,000+ findings of fact, conclusions of law and decision and order. App. Opp. Remand at 2, n. 1.</p>	<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
193	23	<p>That their participation resulted in the filing of thousands of findings is irrelevant to the responsibility of the agency to address those findings. The statute says: If any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so presented. HRS §91-12.</p>	<p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were</p>

<p>consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>			
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castile Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's</p>	<p>There is nothing in the rules that says the agency must make a ruling on each finding filed by a party UNLESS there are too many. The rules does not permit the agency to pick and choose which ones the agency will address and refuse to mention and/or rule upon the rest.</p>	<p>23</p>	<p>194</p>

<p>testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>			
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received</p>	<p>The Applicant at least agrees that the statutory provision applies to the Board, as the decision-maker for the agency. App. Opp. Remand at 2-3.</p>	23	195

<p>into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
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<p>been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>			
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>	<p>The Hearing Officer provides the ultimate decision-maker, in this case the Board of Land and Natural Resources, with findings and conclusions to inform the decision-makers deliberative process.</p>	23	197
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p>	<p>The Hearing Officer is not the gatekeeper determining what reaches the decision-maker. The Hearing Officer addresses the entire record and makes recommendations to the decision-maker addressing the entire record. The entire</p>	23	198

	<p>record is composed of everything submitted, even submissions ruled irrelevant and immaterial.</p>	<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
<p>199</p>	<p>If there are findings submitted by a party that the Hearing Officer does not rule upon, the responsibility of the Board is to either remand the proceeding back to the Hearing Officer to address those findings or conduct a de novo review of those findings and make a ruling. HRS §91-12.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed</p>

			<p>below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
200	24	<p>The statute does not say that the board must rule on each finding submitted by a party UNLESS the Hearing Officer eliminates a party's findings before they reach the Board, i.e. unless the Hearing Officer usurps the authority of the Board.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its</p>

<p>proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>			
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO</p>	<p>If the Hearing Officer does not include a ruling on a party's finding in the proposed decision, the only means for the party presenting that finding to have the finding addressed by the Board is to file an exception specifying the finding not ruled upon and request the Board to make a de novo ruling.</p>	24	201

<p>FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castile Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO</p>	<p>What has happened in this proceeding is that a biased Hearing Officer has refused to provide rulings on hundreds of findings of fact, in some instances on findings going to the heart of a party's case.</p>	<p>202</p> <p>24</p>

<p>FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p>		
<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
<p>It is well established that an adverse ruling does not evidence bias. See <i>Jou v. Dai-Tokyo Royal State Ins. Co.</i>, 116 Hawai'i 159, 165, 172 P.3d 471, 477 (2007) ("It is well-settled that mere adverse rulings are insufficient to establish bias."); <i>James W. Glover, Ltd. v. Fong</i>, 39 Hawai'i 308, 316 (1952) (stating that "mere adverse rulings, even if erroneous[,] would not constitute a "basis for disqualification").</p>		
<p>The Temple's claims of the Hearing Officer and/or BLNR being biased against the Temple (or in favor of UH Hilo/TIO) are not credible and are not supported by reliable probative, substantial and credible evidence or testimony in the record.</p>		

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Now a party whose finding is not specifically ruled upon is burdened with identifying that finding and then guessing why the finding was rejected by selecting from a menu of 21 possible reasons provided by the Hearing Officer.

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This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.

HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that “[i]t is not indispensable that there be a separate ruling on each proposed finding of fact.” *Outdoor Circle v. Harold K.L. Castle Trust Estate*, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also *Mitchell v. BWK Joint Venture*, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party’s proposed findings is not required by HRS § 91-12). While the Temple’s exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple’s testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO’s FOF/COL.

This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. to Board of Land and Natural Resources to Remand Hearing Officer’s Findings of Fact and Conclusions of Law and

<p>Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that “[i]t is not indispensable that there be a separate ruling on each proposed finding of fact.” <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party’s proposed findings is not required by HRS § 91-12). While the Temple’s exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple’s testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO’s FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple’s Mot. to Board of Land and Natural</p>	<p>That failure has limited the input of the Hearing Officer to the Board on numerous issues.</p>	<p>24</p>

<p>Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); <i>see also Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration</p>	<p>The result is that the Board itself must now either remand the proceeding back to the Hearing Officer to make rulings on the findings of fact not specifically identified or ruled upon by the Hearing Officer OR the Board must take up and rule upon the findings for which the Hearing Officer did not provide an identifiable ruling.</p>	

206	24	<p>An identifiable ruling is a ruling that identifies the finding of fact and provides a ruling on that finding. Findings of fact rejected en masse based on any of a group of 21 possible different grounds does not satisfy the requirements of HRS §9-12 [sic].</p>	<p>of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p>
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			<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
207	24	<p>In their filing, the Applicant relies heavily on <i>Mitchell v. BWK Joint Venture</i>, 57 Haw 535, 560 P.2d 1292 (Haw. 1977).</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple's analysis of <i>Mitchell</i> does not support its position. As the Temple repeatedly acknowledges, the court in <i>Mitchell</i> was addressing the agency's responses to proposed findings that were included in the agency's final decision. <i>Mitchell</i> did not involve a hearing officer's responses (or lack thereof) to proposed findings in the hearing officer's proposed decision to the agency, which is the procedure that the Temple is taking exception to.</p>
208	24	<p>The case cited by the Applicant is easily distinguishable from this case and still provides useful guidance.</p>	<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p> <p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and</p>

<p>therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple's analysis of <i>Mitchell</i> does not support its position. As the Temple repeatedly acknowledges, the court in <i>Mitchell</i> was addressing the agency's responses to proposed findings that were included in the agency's final decision. <i>Mitchell</i> did not involve a hearing officer's responses (or lack thereof) to proposed findings in the hearing officer's proposed decision to the agency, which is the procedure that the Temple is taking exception to.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple's analysis of <i>Mitchell</i> does not support its position. As the Temple repeatedly acknowledges, the court in <i>Mitchell</i> was addressing the agency's responses to proposed findings that were included in the agency's final decision. <i>Mitchell</i> did not involve a hearing officer's responses (or lack thereof) to proposed</p>	<p>First of all, the decision-maker in the Mitchell case identified the findings rejected. Ibid. at 1295 ("The board in its decision and order of March 25, 1974, rejected appellants' proposed findings 12-23, 25-27, 30-37, 39, 41, 43-44, 48-55, and 57")</p>	<p>24</p>

<p>findings in the hearing officer's proposed decision to the agency, which is the procedure that the Temple is taking exception to.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's</p>	<p>In this proceeding, the Hearing Officer made no effort to identify the findings rejected. That task is left to be done either within the parties' exceptions or later by the Board.</p>	<p>210</p> <p>24</p>

<p>testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>			
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received</p>	<p>Unless the party whose findings were rejected and not identified now identifies those findings in the exceptions, the Board will have no knowledge of what findings were rejected. Identifying the findings will be almost impossible and, even if successful, will not provide the Board with the Hearing Officer's reason for rejecting the finding.</p>	25	211

<p>into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple's analysis of <i>Mitchell</i> does not support its position. As the Temple repeatedly acknowledges, the court in <i>Mitchell</i> was addressing the agency's responses to proposed findings that were included in the agency's final decision. <i>Mitchell</i> did not involve a hearing officer's responses (or lack thereof) to proposed findings in the hearing officer's proposed decision to the agency, which is the procedure that the Temple is taking exception to.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See</p>	<p>Second, the Mitchell court found that the reasons for rejecting the proposed findings satisfied any requirement of particularity Ibid. at 1297 (“considering the findings eventually made by the Board, the issues involved, and the detailed nature of the proposed findings which were rejected by the Board, we are of the view that the Board indicated to us its reason for each ruling with enough particularity to enable us to satisfactorily review it.”)</p>	

213		<p>In this proceeding, the HO Proposal does not identify the findings rejected and does not provide a reason for each rejection sufficient to allow the Board to review and approve or disapprove the Hearing Officer's ruling.</p>	<p>Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
25			<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p>

			<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
214	25	<p>Third, the Court considered "the detailed nature of the proposed findings which were rejected." Id. There is nothing in the HO Proposal that discusses the nature of the proposed findings rejected because there is no discussion of those findings at all.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple's analysis of <i>Mitchell</i> does not support its position. As the Temple repeatedly acknowledges, the court in <i>Mitchell</i> was addressing the agency's responses to proposed findings that were included in the agency's final decision. <i>Mitchell</i> did not involve a hearing officer's responses (or lack thereof) to proposed findings in the hearing officer's proposed decision to the agency, which is the procedure that the Temple is taking exception to.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a</p>

			<p>separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
215	25	<p>In Mitchell, the ruling in question relied upon limited grounds – the findings were “in whole or in part, contrary to the facts or the law or because they are immaterial.” Mitchell at 1296 citing NLRB v. Sharples Chemicals, Inc., 209 F.2d 645, 652---653 (6th Cir.1954). At most, those reasons are five separate grounds to be considered. Knowing which findings have been rejected, a party could prepare an exception based on disagreement with any of those five reasons.</p>	<p>This exception does not comply with Minute Order No. 103 or HAR § 13-1-42(b), and therefore should be disregarded, because it fails to identify any specific HO FOF or COL.</p> <p>The Temple's analysis of Mitchell does not support its position. As the Temple repeatedly acknowledges, the court in Mitchell was addressing the agency's responses to proposed findings that were included in the agency's final decision. Mitchell did not involve a hearing officer's responses (or lack thereof) to proposed findings in the hearing officer's proposed</p>

			<p>decision to the agency, which is the procedure that the Temple is taking exception to.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
216	25	<p>In this proceeding, after failing to identify the findings rejected, the HO Proposal gives a list of 21 possible reasons for any one finding to have been rejected. HO Proposal at page 7.</p>	<p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p>

217		<p>Mitchell states: "The parties and the court should not be left to guess, with respect to any material question of fact, or to any group of minor matters that may have cumulative significance, the precise finding of the agency." Mitchell at 1296 citing <i>In re Terminal Transportation, Inc.</i>, 54 Haw. 134, 139 504 P.2d 1214, 1217 (1972).</p>	<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
25			<p>The Temple's analysis of Mitchell does not support its position. As the Temple repeatedly acknowledges, the court in Mitchell was addressing the agency's responses to proposed findings that were included in the agency's final decision. Mitchell did not involve a hearing officer's responses (or lack thereof) to proposed findings in the hearing officer's proposed decision to the agency, which is the procedure that the Temple is taking exception to.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received</p>

			<p>into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
218	25	<p>The Mitchell court did issue a warning to agencies: "The Board takes its chances on having a ruling reversed because it has failed to explain its reason sufficiently, or the reason may be so general and all embracing as to justify the Court in reversing the ruling for lack of a specific reason." Ibid. at 1297.</p>	<p>The Temple's analysis of <i>Mitchell</i> does not support its position. As the Temple repeatedly acknowledges, the court in <i>Mitchell</i> was addressing the agency's responses to proposed findings that were included in the agency's final decision. <i>Mitchell</i> did not involve a hearing officer's responses (or lack thereof) to proposed findings in the hearing officer's proposed decision to the agency, which is the procedure that the Temple is taking exception to.</p> <p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App.</p>

			<p>633, 644 (1983) (citations omitted); <i>see also Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. <i>See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order</i>, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
219	25-26	<p>The Board now faces a dilemma. For the ultimate decision to pass judicial scrutiny, the decision must at least identify the findings rejected and provide a having to guess at the reason for rejection.</p>	<p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); <i>see also Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a</p>

			<p>separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p> <p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>
220		The HO Proposal offers no such detail for the Board to review.	<p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castle Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12).</p>

<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.</p>		
<p>HRS § 91-12 governs decisions rendered by agencies, not by hearing officers. Moreover, the law pertaining to submitting proposed findings is clear that "[i]t is not indispensable that there be a separate ruling on each proposed finding of fact." <i>Outdoor Circle v. Harold K.L. Castile Trust Estate</i>, 675 P.2d 784, 792, 4 Haw.App. 633, 644 (1983) (citations omitted); see also <i>Mitchell v. BWK Joint Venture</i>, 57 Haw. 535, 542, 560 P.2d 1292, 1296 (1977) (holding that a separate ruling on each party's proposed findings is not required by HRS § 91-12). While the Temple's exact proposed language may not have been used in the HO FOF/COL, the HO FOF/COL makes clear that all evidence received into the record was duly considered. HO FOF/COL at 7. Moreover, the Temple's testimony as set forth in the record and its proposed FOF, to the extent that they were consistent with the evidence in the record, listed below were incorporated into the HO's FOF/COL.</p>	<p>Again, the Board has to choose between remanding with instructions to at least identify the findings rejected and provide a reasonably identifiable basis for the rejection and the Board having to conduct its own search of the parties' submissions to identify the findings rejected and make a de novo determination as to whether the finding should be accepted or not.</p>	
<p>This exception improperly seeks reconsideration of issues previously raised and ruled upon. See Temple's Mot. to Board of Land and Natural</p>		

			Resources to Remand Hearing Officer's Findings of Fact and Conclusions of Law and Decision and Order, filed August 13, 2017; Minute Order 105, filed August 20, 2017.
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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

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-16-002

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the attached document was served upon the following parties by the means indicated:

Michael Cain
Office of Conservation and Coastal
Lands
1151 Punchbowl, Room 131
Honolulu, HI 96813
michael.cain@hawaii.gov
Custodian of the Records
(ORIGINAL + DIGITAL COPY)

Office of Conservation and
Coastal Lands
dlnr.maunakea@hawaii.gov

Mehana Kihoi
PO Box 393
Honaunau, HI 96726
uhiwai@live.com

Harry Fergerstrom
P.O. Box 951
Kurtistown, HI 96760
hankhawaiian@yahoo.com
(via email & U.S. mail)

C. M. Kaho'okahi Kanuha
77-6504 Maile St
Kailua Kona, HI 96740
Kahookahi.kukiaimauna@gmail.com

Carlsmith Ball LLP
Ian Sandison, Tim Lui-Kwan, John P.
Manaut, Lindsay N. McAneeley
1001 Bishop Street
ASB Tower, Suite 2200
Honolulu, HI 96813
isandison@carlsmith.com
tluikwan@carlsmith.com
jpm@carlsmith.com
lmcaneeley@carlsmith.com
*Counsel for the Applicant University
of Hawai'i at Hilo*

Lanny Alan Sinkin
P. O. Box 833
Bismarck, North Dakota 58502-0833
lanny.sinkin@gmail.com
*Representative for The Temple of
Lono*

Maelani Lee
PO Box 1054
Waianae, HI 96792
maelanilee@yahoo.com

J. Leina'ala Sleightholm
P.O. Box 383035
Waikoloa, HI 96738
leinaala.mauna@gmail.com

Kalikolehua Kanaele
4 Spring Street
Hilo, HI 96720
akulele@yahoo.com

Torkildson, Katz, Moore,
Hetherington & Harris
Attn: Lincoln S. T. Ashida
120 Pauahi Street, Suite 312
Hilo, HI 96720-3084
lsa@torkildson.com
njc@torkildson.com
*Counsel for Perpetuating Unique
Educational Opportunities (PUEO)*

Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom
[dwightjvicente@gmail.com](mailto:dwrightjvicente@gmail.com)
(via email & U.S. mail)

Stephanie-Malia:Tabbada
P O Box 194,
Naalehu, HI 96772
s.tabbada@hawaiiantel.net
(via email & U.S. mail)

Brannon Kamahana Kealoha
89-564 Mokiawe Street
Nanakuli, HI 96792
brannonk@hawaii.edu

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

William Freitas
PO Box 4650
Kailua Kona, HI 96745
pohaku7@yahoo.com

Flores-Case 'Ohana
E. Kalani Flores
ekflores@hawaiiintel.net

Tiffnie Kakalia
549 E. Kahaopea St.
Hilo, HI 96720
tiffniekakalia@gmail.com

Paul K. Neves
kealiikea@yahoo.com

Kealoha Pisciotta and Mauna Kea
Anaina Hou
keomaivg@gmail.com

Deborah J. Ward
cordylinecolor@gmail.com

Cindy Freitas
PO Box 4650
Kailua Kona, HI 96745
hanahanai@hawaii.rr.com

Glen Kila
89-530 Mokiawe Street
Waianae, HI 96792
makakila@gmail.com

B. Pualani Case
puacase@hawaiiintel.net

Clarence Kukauakahi Ching
kahiwal@cs.com

Yuklin Aluli, Esq.
415-C Uluniu Street
Kailua, Hawaii 96734
yuklin@kailualaw.com
Co-Counsel for Petitioner
KAHEA: The Hawaiian
Environmental Alliance, a domestic
non-profit Corporation

Wilma H. Holi
P.O. Box 368
Hanapepe, HI 96716
Witness for the Hearing Officer
w_holi@hotmail.com

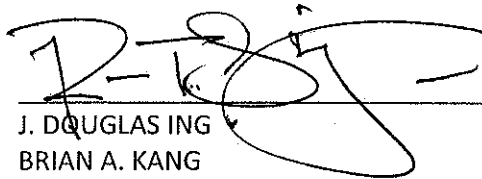
Ivy McIntosh
67-1236 Panale'a Street
Kamuela, Hawaii 96743
3popoki@gmail.com
Witness for the Hearing Officer

Moses Kealamakia Jr.
1059 Puku Street
Hilo, Hawaii 96720
mkealama@yahoo.com
Witness for the Hearing Officer

Crystal F. West
P.O. Box 193
Kapaau, Hawaii 96755
crystalinx@yahoo.com

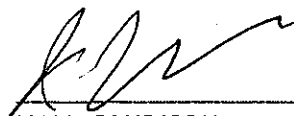
Dexter K. Kaiama, Esq.
111 Hekili Street, #A1607
Kailua, Hawaii 96734
cdexk@hotmail.com
Co-Counsel for Petitioner
KAHEA: The Hawaiian
Environmental Alliance, a domestic
non-profit Corporation

DATED: Honolulu, Hawaii, September 11, 2017



J. DOUGLAS ING
BRIAN A. KANG
ROSS T. SHINYAMA
SUMMER H. KAIawe

Attorneys for TMT INTERNATIONAL OBSERVATORY LLC



IAN L. SANDISON
JOHN P. MANAUT
LINDSAY N. MCANEELEY
Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO