

CARLSMITH BALL LLP

IAN L. SANDISON 5597
TIM LUI-KWAN 2271
JOHN P. MANAUT 3989
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, HI 96813
Tel No. 808.523.2500
Fax No. 808.523.0842

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2016 AUG -1 P 3:57

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

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'S **OPPOSITION TO TEMPLE OF
LONO'S MOTION FOR PARTIAL
SUMMARY JUDGMENT [DOC. 78];
DECLARATION OF COUNSEL;
EXHIBITS "1" - "2"; CERTIFICATE OF
SERVICE**

**THE UNIVERSITY OF HAWAI'I AT HILO'S OPPOSITION TO TEMPLE OF LONO'S
MOTION FOR PARTIAL SUMMARY JUDGMENT [DOC. 78]**

I. INTRODUCTION

The Temple of Lono ("**Temple**") improperly seeks summary judgment on two claims related to the Temple's alleged religious practices, arguing that:

- (1) "the summit of Mauna a Wākea is a sacred site of special significance in the traditional Hawaiian faith"; and
- (2) "the traditional Hawaiian faith is still practiced."

Temple Mem. at 4. The Hearing Officer has no authority under a purported Haw. R. Civ. P 56 motion to grant summary judgment as a matter of law, procedurally, or based on unproven and not properly attested facts. Consideration of these matters could only occur after an evidentiary

hearing.

If the Hearing Officer does consider the Temple's first claim that the whole mountain is a sacred site for the Temple's purposes, such a ruling would violate the *establishment clause* of both the U.S. and Hawai'i Constitutions. It would require the Hearing Officer to recognize a *religious servitude* over that small land area of Mauna Kea proposed for the TMT project (the "TMT Site").

The second part of the Temple's claim is too incomplete and unsupported to be relevant to the specific TMT site, based on controlling Hawai'i law (*Dedman*, discussed below). Under *Dedman*, for the Temple to claim any free exercise right concerning the TMT Site, it must show that the Temple traditionally practiced religion materially impacted by the TMT Site. Under *Dedman*, only proof that the Temple traditionally practiced religion at the specific TMT Site could state a claim, subject to other defenses addressed below. That conclusion, however, would require the Hearing Officer to decide critical, disputed facts, based on an undeveloped record regarding such alleged practices that is not supported by competent admissible evidence or a properly authenticated declaration under Haw. R. Civ. P. 56(e) (if that rule were applicable). See *Carriers Ins. Co. v. Domingo*, 1 Haw.App. 478, 480, 620 P.2d 761, 762-63 (1980).

Additional reasons for denying the Temple's motion are set forth below.

II. BACKGROUND

The Temple alleges that Mauna Kea is "sacred" and "especially sacred."¹ The late Judge Samuel King describes the Temple:²

¹ The Temple also states: "the peak of Mauna Kea (Mauna a Wākea) is *especially sacred* to the traditional Hawaiian faith ..." Temple Mot. at 1 (emphasis added); Temple Mem. at 1 (same). So, it not just "sacred"; it is "especially sacred." *Id.*

² The Temple likewise cites Judge King's statement. Temple Mem. at 5-6.

Frank Nobriga is the active force behind the Temple of Lono movement which began in 1971.³ Their purpose is to maintain a spiritual land bank, with temples throughout the islands. The first temple was established on Kahoolawe in 1976,⁴ having been conceived as a result of the involvement by Hawaiians in the recapturing of that island for civilian purposes. At the time he spoke for the video tape, there were a total of four such temples.⁵ The Temple of Lono is rediscovering the elements of ancient Hawaiian religion, including a four-God concept. Adherents believe that this is a form of cultural sovereignty.⁶

Based on these statements, the Temple seeks to establish a “spiritual land bank” over the top of Mauna Kea. In a nutshell, the Temple seeks to use the free exercise clause to create a *religious servitude* on state land where the University of Hawai‘i (“University”) seeks to build the TMT project.⁷ The Temple seeks to raise the free exercise clause claim above other’s property rights.⁸

III. RELIGIOUS FREEDOMS PROTECTED BY THE U.S. AND HAWAI‘I CONSTITUTIONS

A. CONSTITUTIONAL CLAUSES PROTECTING RELIGIOUS FREEDOMS

The U.S. and Hawai‘i Constitutions each have two provisions concerning religion: the

³ If the Temple “began in 1971,” logically it could not have *traditionally* practiced its ceremonies on Mauna Kea.

⁴ If the Temple established its first temple in 1976, logically it could not have *traditionally* practiced its ceremonies on Mauna Kea.

⁵ The Temple omits the sentence: “At the time he spoke for the video tape, there were a total of four such temples.” The Temple fails to submit evidence that it traditionally had any temple on Mauna Kea, and more particularly, at any area materially impacted by TMT.

⁶ Hon. Samuel P. King, *Hawaiian Sovereignty*, 3 HAWAI‘I BAR JOURNAL 6, 9 (July 1999) (emphases added).

⁷ The Temple considers the TMT project a “desecration of Mauna a Wākea.” Temple Mot. Intervene, at 2. The Temple objects to the “desecration of Mauna a Wākea by the construction of telescopes.” Temple Mot. Intervene, 5/27/16 Nobriga Dec. at 2 ¶ 12. For the Temple, “the mountain is sacred and ... the construction of the telescope constitutes desecration of a sacred site.” Ex. 1 [*Nobriga v. Ige, et al.*, U.S.D.C. Hawai‘i CV 15-00254DKWBMK, Complaint (filed 7/6/15), at 3 ¶ 10].

⁸ Cf. *Sequoyah v. Tennessee Valley Auth.*, 480 F. Supp. 608 (E.D. Tenn. 1979) (“The Court has been cited to no case that conflates the free exercise clause with property rights. The free exercise clause is not a license in itself to enter property, government-owned or otherwise, to which religious practitioners have no other legal right of access.”), *aff’d*, 620 F.2d 1159 (6th Cir.1980), *cert. denied*, 449 U.S. 953 (1980).

establishment clause and the free exercise clause. “Congress shall make no law respecting *an establishment of religion*, or prohibiting the free exercise thereof” U.S. Const. am. 1 (emphasis added). “No law shall be enacted respecting *an establishment of religion*, or prohibiting the free exercise thereof” Hawai‘i Const. art. I, § 4 (emphasis added).

B. HAWAI‘I COURT’S TREATMENT OF RELIGIOUS FREEDOMS

Hawai‘i courts have declined to interpret the requirements of the Hawai‘i Constitution on the free exercise clause to extend greater protection than the U.S. Constitution. Hawai‘i courts have applied the test in *Wisconsin v. Yoder*, 406 U.S. 205 (1972).⁹ Hawai‘i courts examine the legitimacy of the religious belief involved, the burden on the religious belief, the impact on religious practices, and the existence of a compelling state interest.¹⁰ Generally, Hawaiian courts resolving cases involving religious freedoms look to first amendment principles and authorities.¹¹

IV. ANALYSIS

A. THE HEARING OFFICER HAS NO AUTHORITY TO RECOGNIZE A RELIGIOUS SERVITUDE OVER ANY LANDS WITHIN THE MAUNA KEA SUMMIT

The Temple seeks to “land-bank” Mauna Kea for *its own* religious practices. In so doing, the Temple seeks to freeze and prevent the University from exercising its rights to use and seek permitted uses on its land interests. The Temple asks the Hearing Officer to find as a matter of law and undisputed fact that Mauna Kea is “a sacred site of special significance in the traditional Hawaiian faith....” Temple Mem. at 4 (emphasis added). The Temple signals a religious basis

⁹ *Abrogated in part by Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 878-882 (1990)).

¹⁰ *E.g., State v. Andrews*, 65 Haw. 289, 651 P.2d 473 (1982); *State v. Blake*, 5 Haw.App. 411, 695 P.2d 336 (1985).

¹¹ *See, e.g., Dedman v. Board of Land & Natural Resources*, 69 Haw. 255, 740 P.2d 28 (1987), *cert. denied*, 485 U.S. 1020 (1988); *State v. Andrews*, 65 Haw. 289, 651 P.2d 473 (1982); *Medeiros v. Kiyosaki*, 52 Haw. 436, 478 P.2d 314 (1970); *State v. Blake*, 5 Haw.App. 411, 695 P.2d 336 (1985). *See generally Cammack v. Waihee*, 932 F.2d 765, 767 n.4 (9th Cir. 1991).

(i.e., free exercise of religion) for preventing the TMT project on Mauna Kea.¹² The Temple seeks an exclusive, religious servitude over public land. Accommodating that religious freedom would violate another, equally important one: freedom from the establishment of religion. Such is the constitutional minefield into which the Temple wants the Hearing Officer to tread on a virtually nonexistent evidentiary record.

Courts have not been receptive to comparable Native American religious challenges to the government's authority to manage its land. In the seminal case of *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988), the U.S. Supreme Court decided whether government's development of its land held sacred by certain Indian tribes violated the U.S. Constitution. The *Lyng* court upheld that development because the affected Native Americans would not **"be coerced by the Government's action into violating their religious beliefs; nor would [the] governmental action penalize religious activity"** *Id.* at 449 (emphasis added). The "coercion or penalty" requirement greatly narrows the types of facts that will support a legally cognizable claim based on a free exercise challenge to the government's actions on public lands held sacred by native peoples. Here, that requirement abruptly negates any reliance by the Temple on the free exercise clause concerning any lands within the summit of Mauna Kea.

The *Lyng* court rejected claims by Yurok, Karok, and Tolowa Indians that a U.S. Forest Service plan to build a logging road through the High Country would violate rights protected under the first amendment (and various federal statutes). *Id.* at 451-53. The plaintiffs alleged

¹² The Temple's challenge of the TMT project is analogous to Indian tribes' challenge to the Mt. Graham international observatory project in the 1990s. See, e.g., *Apache Survival Coalition v. U.S.*, 21 F.3d 895 (9th Cir. 1994); *Mt. Graham Red Squirrel v. Espy*, 986 F.2d 1568 (9th Cir. 1993); *Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441 (9th Cir. 1992); *Mt. Graham Red Squirrel v. Yeutter*, 930 F.2d 703 (9th Cir. 1991). There, the Apache challenged the building of a huge telescope by the University of Arizona on a mountain that the Apache held sacred—and lost. *Apache Survival Coalition*, 21 F.3d at 898.

that the timber and road project irreparably would damage certain sacred sites and interfere with religious rituals that depended on privacy, silence, and the undisturbed natural setting of the High Country. *Id.* at 442. They argued that construction of the road would make it *impossible for them to exercise their religious rights*. *Id.* at 451. The *Lyng* court nonetheless held that the government could go ahead with the project, for two reasons.

First, the first amendment only prevents the government from imposing penalties based on religious activity or coercing behavior that violates religious belief. *Id.* at 449. The free exercise clause does not prohibit “incidental effects of government programs,” such as the road construction’s impact on the High Country, which may interfere with the practice of certain religions. *Id.* at 450-51. Under *Lyng*, a burden is unconstitutional when governmental action *coerces the parties into violating their religious beliefs*. *Id.*

The *Lyng* court reaffirmed the holding of *Bowen v. Roy*, 476 U.S. 693 (1986),¹³ that the free exercise clause does not prevent all government action that may have incidental effects that interfere with the practice of certain religions. The free exercise clause does not require the government to act in ways that comport with the religious beliefs of individual citizens; the clause only protects individuals from *certain forms of government compulsion*. *Lyng*, 485 U.S. at 448-49. The government’s action in *Lyng* did not coerce the Indian tribes into violating their beliefs, nor did it penalize the exercise of those beliefs by denying adherents benefits or privileges enjoyed by other citizens.

¹³ In *Bowen*, Native American parents refused to register their daughter for a Social Security number on the ground that, according to their religion, such action would tarnish the purity of her spirit. The *Bowen* court found for the government because “[t]he requirement that applicants provide a Social Security number is facially neutral and applies to all applicants for the benefits involved.” *Id.* at 708.

Second, the *Lyng* Court held that the constitutional right to free exercise of religion “must apply to all citizens alike, and it can give to none of them a veto over public programs that do not prohibit the free exercise of religion.” *Id.* at 452. “[G]overnment simply could not operate if it were required to satisfy every citizen’s religious needs and desires.” *Id.* Thus, *Lyng* confirmed the breadth of the government’s management authority over public lands: “Whatever rights the Indians may have to the use of the area, however, those rights do not divest the Government of its right to use what is, after all, *its* land.” *Id.* at 450-51, 453 (emphasis in the original). Under *Lyng*, the government has almost absolute authority to manage “its land” in the face of a free exercise challenge.

In *Lyng*, the U.S Supreme Court placed virtually no limit on what the government could do on its own property, except for the possibility of a *constitutional problem*, if the government excluded only the Indians from sacred sites.¹⁴ A dissenting Justice stated in *Lyng*:

Similarly, the Court’s concern that the claims of Native Americans will place “*religious servitudes*” upon vast tracts of federal property cannot justify its refusal to recognize the constitutional injury respondents will suffer here. It is true, as the Court notes, that respondents’ religious use of the high country requires privacy and solitude. **The fact remains, however, that respondents have never asked the Forest Service to exclude others from the area. Should respondents or any other group seek to force the Government to protect their religious practices from the interference of private parties, such a demand would implicate not only the concerns of the Free Exercise Clause, but also those of the Establishment Clause as well.**¹⁵

Any state action (like a Board of Land and Natural Resources¹⁶ or Hearing Officer decision) that creates a “religious servitude” by excluding persons (including the University) from Mauna Kea (or the TMT Site), in deference to native Hawaiians practicing their religion, raises the very

¹⁴ *Lyng*, 485 U.S. at 452-53.

¹⁵ *Id.* at 476 (Brennan, dissenting) (emphases added).

¹⁶ “Board”

constitutional problem recognized in *Lyng*.

At least three federal courts have suggested that governmental protection of Indian religious practices may violate the establishment clause, in cases dealing with Indian sacred sites on public land.¹⁷ The establishment clause expressly limits “religious servitudes”¹⁸ on public land. Government protection of “sacred sites” is a *per se* violation of the constitutional prohibition against establishment of religion.¹⁹ The Tenth Circuit, in *Badoni*, summarizes that construction of the establishment clause: “The First Amendment ... gives no one the right to insist that in pursuit of their own interests others must conform their conduct to his own religious necessities.... We must accommodate our idiosyncrasies, religious as well as secular, to *the compromise necessary in communal life.*”²⁰

In *Badoni*, the Tenth Circuit held that accommodating Indian claims would violate the

¹⁷ *Badoni v. Higginson*, 638 F.2d 172, 179 (10th Cir. 1980), *cert. denied*, 452 U.S. 954 (1981); *Inupiat Cmty. v. United States*, 548 F. Supp. 182, 189 (D. Alaska 1982) (observing “that the relief sought by the Inupiat creates serious Establishment Clause problems,” and explaining that “a free-exercise claim cannot be pushed to the point of awarding exclusive rights to a public area,” noting) (citing *Badoni*), *aff’d*, 746 F.2d 570 (9th Cir. 1984); *Crow v. Gullet*, 541 F. Supp. 785, 794 (D.S.D. 1982) (noting that “the government risks being haled into court by others who claim that the same rights of the general public are being unduly burdened, or that state government has become ‘excessively entangled’ with religion, in violation of the Establishment Clause.”) (citing *Widmar v. Vincent*, 454 U.S. 263 (1981)), *aff’d*, 706 F.2d 856 (8th Cir. 1983). Those courts relied upon the Establishment Clause as an additional basis to reject *Indian* claims regarding sacred sites. *See also United States v. Means*, 858 F.2d 404, 407-08 n.6 (8th Cir. 1988) (“Query whether granting a special use permit for the construction of a permanent religious community on 800 acres of public land would raise similar issues of government aid to religion in violation of the Establishment Clause.”). ***Dedman cited Inupiat Cmty. and Gullet, concerning limitations on the free exercise clause.*** 69 Haw. at 262-63, 740 P.2d at 33-34.

¹⁸ *See, e.g., Lyng*, 485 U.S. 439; *Badoni*, 638 F.2d at 179. *Cf. also Sequoyah v. Tennessee Valley Auth.*, 620 F.2d 1159 (6th Cir.1980), *aff’g* 480 F. Supp. 608 (E.D.Tenn. 1979), *cert. denied*, 449 U.S. 953 (1980) (Cherokee Indians unsuccessfully sought to enjoin the completion of the Tellico Dam on the Little Tennessee River, claiming that the resultant flooding would consume what some Cherokee Indians regard as their “Jerusalem.”).

¹⁹ *See, e.g., Lyng*, 485 U.S. at 452; *Badoni*, 638 F.2d at 179.

²⁰ *Badoni*, 638 F.2d at 179 (quoting Judge Hand’s opinion in *Otten v. Baltimore and O. R. Co.*, 205 F.2d 58, 61 (2d Cir. 1953)) (emphases added).

establishment clause, stating that *excluding tourists from a Navajo sacred site* “would seem a clear violation of the establishment clause.”²¹ Here, the Temple seeks to exclude the University from using lands within the Mauna Kea summit. In *Badoni*, the Tenth Circuit suggested that to require tourists to behave in a manner respectful to the Indian religious interests would create a “government-managed religious shrine.” *Id.* Under this established constitutional precedent, the Temple cannot use this proceeding to land-bank Mauna Kea as a state-managed religious shrine. The establishment clause rejects the Temple’s attempts to land-bank Mauna Kea for the Temple’s own religious use. Because the free exercise clause claim challenges the establishment of religion clause, the Temple has no legal basis supporting its motion.

B. BASED ON THE RECORD, THE HEARING OFFICER CANNOT CONCLUDE THAT THE TEMPLE’S RELIGION HAS BEEN MATERIALLY IMPACTED ON LANDS WITHIN THE MAUNA KEA SUMMIT; ANYTHING SHORT OF THAT CONCLUSION IS IRRELEVANT

It is irrelevant to this proceeding whether “the traditional Hawaiian faith is still practiced,” unless “the traditional Hawaiian faith” *also* was actually “practiced” on the Mauna Kea summit or within the TMT Site. That is the holding of *Dedman v. Bd. of Land and Natural Resources*, 69 Haw. 255, 740 P.2d 28 (1987), *cert. denied*, 485 U.S. 1020 (1988). Under *Dedman*, the Temple has not even shown that it held or conducted any religious ceremonies in the area within the summit’s astronomy precincts. Therefore, there can be no burden on the religious ceremonies, and, in turn, no viable claim under the free exercise clause.²² *Dedman*

²¹ *Badoni*, 638 F.2d at 179.

²² *Dedman* exemplifies the conventional *Yoder* analysis used in deciding Native American freedom of religion claims. As developed below, the *Dedman* court implicitly rejected the notion that “sacred sites” have intrinsic religious value and significance apart from whether those “sacred sites” have been actively used in the practice of the religion. That is, absent any showing by native Hawaiians that they *actually had performed religious ceremonies and activities on the land*, no discernible objective harm was evident, and they therefore failed to establish the requisite “substantial burden” on their religion was imposed by the owner’s use of that land.

controls in this proceeding on that critical point. There is no admissible evidence that the Temple traditionally held religious ceremonies at any specific location within the summit of Mauna Kea, and any such claim would be genuinely disputed precluding summary judgment.

In *Dedman*, native Hawaiians challenged a Board's decision permitting geothermal development in an the *Wao Kele 'O Puna* rainforest, an area significant to native religious practitioners who honor the deity Pele.²³ The Pele practitioners claimed that the proposed development would impinge on their right to free religious exercise, because geothermal development requires drilling into the body of Pele and taking her energy and lifeblood.²⁴

The *Dedman* court acknowledged the sincerity of the religious claims.²⁵ It then considered whether the Board's approval of the proposed geothermal development would unconstitutionally infringe upon native Hawaiian religious practice.²⁶ On that critical issue, the *Dedman* court found controlling **the absence of proof that religious ceremonies were held in the areas of development**.²⁷ Without proof of the free exercise of native Hawaiian religion, the *Dedman* court did not reach the question of a compelling state interest. The *Dedman* court concluded that no free exercise clause violation had occurred.²⁸

Specifically, the *Dedman* court found that the uncontroverted testimony by Pele religious practitioners of the impact on their religion by private development of state-owned geothermal resources constituted nothing more than the "mere assertion of harm to religious practices" and

²³ *Dedman*, 69 Haw. at 256, 740 P.2d at 31.

²⁴ *Id.* at 259-260, 740 P.2d at 32. The area proposed for geothermal development was considered the home of Pele, the volcano goddess in traditional Hawaiian religion.

²⁵ *Id.* at 260, 740 P.2d at 32.

²⁶ *Id.*

²⁷ *Id.* at 261, 740 P.2d at 33.

²⁸ *Id.* at 261-62, 740 P.2d at 32-33

therefore did not meet the requirements of the burden prong. 69 Haw. at 262, 720 P.2d at 32-33;

The *Dedman* court reasoned:

In order to demonstrate the coercive effect of the geothermal project, Appellants must show a “substantial burden” on religious interests. *Koolau*, 68 Haw. at —, 718 P.2d at 272; *Wisconsin v. Yoder*, 406 U.S. at 218, 92 S.Ct. at 1534. Yet it is uncontested that “[n]either of the [Appellants] nor any of the witnesses testified that *they ever conducted or participated in religious ceremonies on this land.*” And the Board specifically concluded that “[t]here is no indication that tapping this heat source from the earth has diminished or negatively affected the eruptive nature of Kilauea Volcano.” There is simply no showing of “the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent.” *Wisconsin v. Yoder*, 406 U.S. at 218, 92 S. Ct. at 1534.

To invalidate the Board’s actions based on *the mere assertion of harm to religious practices* would contravene the fundamental purpose of preventing the state from fostering support of one religion over another. As Judge Learned Hand stated:

The First amendment ... gives no one the right to insist that in pursuit of their own interests others must conform their conduct to his own religious necessities.... We must accommodate our idiosyncrasies, religious as well as secular, to the compromises necessary in communal life[.]

Otten v. Baltimore & Ohio R. Co., 205 F.2d 58, 61 (2d Cir. 1953).
Accord Estate of Thornton v. Caldor, Inc., 472 U.S. 703, 710, 105 S.Ct. 2914, 2918, 86 L.Ed.2d 577 (1985).

We find no merit to Appellants’ claim that the project will substantially burden their religious practices....

Dedman, 69 Haw. at 262-63, 740 P.2d at 33 (internal footnote omitted) (emphases added).

So, under *Dedman*, if there is no proof that religious ceremonies were held on the land of the development by the Temple, there can be no burden on the religious ceremonies, and, in turn, no viable claim under the free exercise clause.²⁹ Here, the Temple submits no such proof. The

²⁹ In *Dedman*, the Hawai’i Supreme Court applied the test adopted in *Wisconsin v. Yoder*, 406 U.S. 205 (1972). 69 Haw. at 260-62, 740 P.2d at 32-33. In *Yoder*, members of the Amish sect refused to permit their children to continue formal education beyond the eighth grade. The Amish valued and practiced agricultural work and feared higher education would endanger their children’s salvation. Their refusal to allow their children to attend school, however, violated Wisconsin’s compulsory school attendance laws. The *Yoder* court reviewed the burden imposed

University submits that any such offers of proof are disputed, so the Temple's motion cannot be sustained.

The Hawai'i Supreme Court confirmed its position in *Dedman* that parties cannot assert that public land is "holy," to obtain some concession from the government concerning that land:

It is simply insufficient that Abbot Ki felt that the property chosen would be convenient for parking, beautiful, ..., or even "holy." *The Temple cannot force the City to zone according to its religious conclusion that a particular plot of land is "holy ground."* Cf. *Dedman*, 69 Haw. at 259-63, 740 P.2d at 31-34 (rejecting a challenge to the designation of an area in the Kilauea Middle East Rift Zone, on the Island of Hawai'i, as a geothermal resource subzone by "Pele practitioners" who believed that the land in that area was sacred and that geothermal plants would desecrate the body of Pele).³⁰

In *Sullivan*, a Buddhist temple filed appeals from administrative denials of applications for a height variance for its main temple hall. The trial court affirmed. On appeal, the *Sullivan* court found that the temple failed to show a substantial burden on its free exercise of religion, so the court did not evaluate whether the City's interest in enforcing its height regulations is compelling. It ruled the temple's free exercise rights, as protected by the first amendment to the U.S. Constitution and article I, section 4 of the Hawai'i Constitution, were not violated.³¹

In *State v. Armitage*, 132 Hawai'i 36, 319 P.3d 1044 (Hawai'i 2014), the Hawai'i Supreme Court continued to rely on *Dedman*.³² In *Armitage*, several native Hawaiians were charged for entering the Kaho'olawe island reserve without state authorization. They claimed

by the school attendance law on Amish religion. The *Yoder* court then held that the state's interest in education was sufficiently compelling to overcome the free exercise clause protection of Amish religious practices. *Id.* at 234.

³⁰ *Korean Buddhist Dae Won Sa Temple of Hawai'i v. Sullivan*, 87 Hawai'i 217, 248, 953 P.2d 1315, 1346 (1998) (internal citation omitted; emphases added) ("**Sullivan**").

³¹ 87 Hawai'i at 249, 953 P.2d at 1347.

³² The *Armitage* court relied on *Dedman* for this proposition: it is necessary to examine whether or not the activity interfered with by the state was motivated and rooted in a legitimate and sincerely held religious belief and whether or not the parties' free exercise of religion had been burdened by the regulation. *Id.* at 60, 319 P.3d at 1068 (citation omitted).

protection under the free exercise clause, for their religious practices on Kaho’olawe island.³³

The *Armitage* court rejected that defense, reasoning, in part: “[S]uch practices did not have to take place on Kaho’olawe as part of the practice of their religion.”³⁴ Here, the Temple submits no evidence that its religious practices have taken place anywhere within the summit of Mauna Kea as part of the practice of its religion. The Temple has only reported other temple locations.

Finally, a commentator on native Hawaiian rights digested an earlier lawsuit concerning the Temple and its unsuccessful attempt to create a religious servitude over state land:

In *State v. Lono*, members of the Temple of Lono were arrested and charged with camping without a permit at Kualoa Regional Park. Kualoa is a ***sacred site and the location of an ancient heiau dedicated to Lono***. Park regulations did not allow extended camping periods, and Temple members had entered and remained in the park for periods from three weeks to four months in order to perform various ceremonies. One of the religious practices involved sitting in a meditative state until experiencing *h’ike a ka po* or night visions, providing inspiration and guidance. In their defense, Temple members challenged the park regulation as an infringement upon religious freedom. The trial court determined that defendants “religious interest in participating in dreams at Kualoa Regional Park are not ***indispensable to the Hawaiian religious practices***, and further the Defendants’ practices in exercising their religious beliefs ... ***are philosophical and personal and therefore not entitled to First Amendment protection***.” The Hawaii Supreme Court also gave short shrift to the religious freedom argument, affirming the trial court in a memorandum opinion.³⁵

In *State v. Lono*, there was a geographical and traditional tie between the Temple and the “sacred site.” Despite that recognized tie, the Temple was denied free exercise clause rights to that “sacred site.” Here, there is no proven tie between the Temple and the Mauna Kea summit areas, geographical or traditional. The Temple has not shown that holding ceremonies at such areas is “indispensable to the Hawaiian religious practices.” The Temple submits no evidence

³³ *Id.* at 58, 319 P.3d at 1066.

³⁴ *Id.* at 61, 319 P.3d at 1069.

³⁵ Melody Kapilialoha MacKenzie, *The Lum Court and Native Hawaiian Rights*, 14 U. HAW. L. REV. 377, 388 nn.57-59 (1992) (internal notes omitted) (emphases added).

that it ever practiced its religion anywhere on the summit. Absent such proof, there is no basis to conclude anything about the Temple's alleged free exercise rights concerning the TMT Site.

V. POLICY CONSIDERATIONS FOR MOTION

The University believes that Mauna Kea can accommodate *both* the TMT project *and* traditional native Hawaiian religion: astronomy and the Temple's religion can thrive together on the mountain. The Temple, by its papers and actions, rejects that sharing of Mauna Kea. The Temple is fundamentally adversarial (and ardently absolutist), by using this proceeding as a platform to advance its own religious agenda. The Temple's motion and other papers show that the Temple seeks *state recognition* of the "traditional faith of the Hawaiian people,"³⁶ stating:

The discrimination *by the State* [against "the traditional faith"] is a reflection of similar disrespect found elsewhere. The Mauna a Wākea³⁷ controversy surfaced the continuing bigotry towards the traditional faith.... As the Kahuna states: "The challenge is about the right of a faith to be respected and practiced in its own homeland."³⁸

The Temple's "challenge" is not primarily about whether the state should issue the University a permit for the TMT at the TMT Site; instead, the "challenge" is about the Temple's "right ... to be respected and practiced in [Hawai'i]." 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. The Temple wants a

³⁶ The Temple complains: "In the eyes of the Temple, the disrespect shown for the traditional faith of the Hawaiian people is a matter of record for more than 100 years and most recently found expression through the State of Hawai'i actions that either suppressed the traditional faith, limited traditional faith practice, or relegated traditional faith practitioners to a second class citizenship unprotected by the Constitution and laws of the United States." Temple Mot. Intervene, 5/27/16 Nobriga Dec. at 2 ¶ 2 (emphases added).

³⁷ The "Mauna a Wākea controversy" is the University's plan to build the TMT on Mauna Kea.

³⁸ Ex. 2 [*Nobriga v. Ige, et al.*, U.S.D.C. Hawai'i CV 15-00254DKWBMK, Mem. in Supp. of TRO (filed 7/6/15), at 7 (quoting "Kahuna" Nobriga of ToL) (bracketed material added)].

religious servitude over all of Mauna Kea, for the purpose of advancing its own religious agenda.

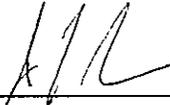
The Temple's religious fundamentalism calls into play the tension between the establishment clause and the free exercise clause. The Temple wants *full expansion* of the free exercise clause regarding Mauna Kea. But the establishment clause holds that full expression in check. While the Temple may have certain free exercise rights concerning Mauna Kea, they are limited under applicable case law on the free exercise clause (*Dedman, Sullivan, Armitage*), and by case law invoking the establishment clause (*Lyng, Badoni, Inupiat Community, Crow, Means*). In short, the Temple cannot use this proceeding to obtain a religious servitude over Mauna Kea, as part of advancing the Temple's fundamentalist agenda.

The Temple will try to use this proceeding to galvanize a religious movement. Indeed, the Temple states that religion will be an essential part of this proceeding: “[I]ssues related to Traditional Hawaiian Faith are going to be *an essential part of the contested case*” Temple Mot. Intervene, Mem. Supp. at 2 (emphasis added). The Hearing Officer should not allow such diversions from the stated criteria to obtain a permit. Again, the establishment clause does not allow a religious servitude to be imposed over the summit of Mauna Kea; and the free exercise clause is not engrained with any property rights. The Temple's religious agenda for this proceeding therefore is unconstitutional. The Hearing Officer should not allow this proceeding to become a platform for the Temple to advance its religious agenda.

VI. CONCLUSION

The result that the Temple asks the Hearing Officer to reach would violate the establishment clause of both the U.S. and Hawai'i Constitutions, and is otherwise unsupported by admissible evidence and is irrelevant to these proceedings. Thus, the University respectfully requests that the motion be denied.

DATED: Honolulu, Hawai'i, August 1, 2016.



IAN L. SANDISON
TIM LUI-KWAN
JOHN P. MANAUT

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

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,
Hamakua, Hawai'i, TMK (3) 4-4-015:009

CASE NO. BLNR-CC-16-002

DECLARATION OF COUNSEL;
EXHIBITS "1" - "2"

DECLARATION OF COUNSEL

I, IAN L. SANDISON, declare:

1. I am a partner at the law firm of Carlsmith Ball LLP, counsel for UNIVERSITY OF HAWAI'I AT HILO, in the above-caption matter.
2. I am authorized and competent to testify to the matters set forth herein, and unless otherwise indicated, I make this declaration based upon my personal knowledge
3. Attached hereto as Exhibit 1 is a true and correct copy of the Complaint, filed on July 6, 2015, in *Nobriga v. Ige, et al.*, U.S.D.C. Hawai'i CV 15-00253DKWBMK.
4. Attached hereto as Exhibit 2 is a true and correct copy of the Memorandum in Support of Temporary Restraining Order, filed on July 6, 2015, in *Nobriga v. Ige, et al.*, U.S.D.C. Hawai'i CV 15-00253DKWBMK.

This declaration is made upon personal knowledge and is filed pursuant to Rule 7(b) of the Rules of the Circuit Courts of the State of Hawai'i. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 1st day of August, 2016.



IAN L. SANDISON

EXHIBIT 1

Suzanne Case is Chairperson of the State of Hawai'i Department of Land and Natural Resources (DLNR) and is named in her official capacity.¹

Kekoa Kaluhiwa is Deputy Director of DLNR and is named in his official capacity.

Gregory Mooers is Chair of the Office of Mauna Kea Management (OMKM) and is named in his official capacity.²

John Doe #1, yet to be identified, is also responsible for imposing rules or enforcing rules that restrict spiritual practice on Mauna a Wakea and is named in his or her official capacity.

Facts³

¹ The Department of Land and Natural Resources, headed by an executive Board of Land and Natural Resources, is responsible for managing, administering, and exercising control over public lands, water resources, ocean waters, navigable streams, coastal areas (except commercial harbors), minerals, and all interests therein. The department's jurisdiction encompasses nearly 1.3 million acres of State lands, beaches, and coastal waters as well as 750 miles of coastline (the fourth longest in the country). It includes state parks; historical sites; forests and forest reserves; aquatic life and its sanctuaries; public fishing areas; boating, ocean recreation, and coastal programs; wildlife and its sanctuaries; game management areas; public hunting areas; and natural area reserves.
<http://dlnr.hawaii.gov/about-dlnr/>

² Office of Mauna Kea Management(OMKM) - The Maunakea Management Board provides the community with a sustained direct voice for the management of the Maunakea. The Board is comprised of seven members from the community who are nominated by the UH Hilo Chancellor and approved by the UH Board of Regents. The volunteer members represent a cross-section of the community and serve as the community's voice providing input on operations and activities, developing policies, reviewing and providing recommendations for land uses planned for Maunakea.

<http://www.malamamaunakea.org/management/mauna-kea-management-board>

³ The facts set forth here are supported by the Declaration of Counsel that accompanies this memorandum.

This Honorable Court can take judicial notice that there is a major controversy over the proposal to build the Thirty Meter Telescope (TMT) on Mauna a Wakea, a mountain on the Island of Hawai'i.

Part of the basis for that controversy is the assertion by practitioners of the traditional Hawaiian faith that the mountain is sacred and that the construction of the telescope constitutes desecration of a sacred site.

On Wednesday, June 24, 2015, an attempt was made to bring a construction crew to the site of the TMT.

Hundreds of people gathered to protect the Mountain and prevent what they considered desecration.

The construction crew was first preceded by County of Hawai'i police officers.

From the 9,000 foot level and continuing up the mountain, hundreds of Protectors of Mauna a Wakea blocked the progress of the convoy.

While in the County jurisdiction, the moving blockade and the County police proceeded peacefully up the mountain.

In the County jurisdiction, there was only one arrest. At the 10,000 foot level, the jurisdiction changed to the DLNR.

In the DLNR jurisdiction, the officers became more aggressive and arrests increased.

In response to the more aggressive DLNR actions, Protectors further up the Mountain placed rocks and rock walls in the roadway to obstruct the progress of the convoy without requiring interaction between the Protectors and the DLNR officers.

When the convoy reached the rocks, DLNR made the decision to abandon the effort to reach the TMT site.

The convoy turned around and descended the Mountain.

By Friday, June 26, 2015, the Protectors had removed all the rock obstructions from the road.

Subsequently, Rangers with the Office of Mauna Kea Management informed those engaging in spiritual practices on the Mountain that they would only be allowed to ascend the Mountain at 1:00 p.m.⁴

The Rangers also stated that only ten people would be allowed to ascend the Mountain to engage in spiritual practice.

The Rangers also stated that groups ascending the Mountain to pule (pray) are required to be accompanied by a Ranger.

Some Rangers have stated that they will try to accommodate spiritual practitioners at times other than 1:00 p.m. Attempts to make such arrangements have not been successful.

⁴ Mauna Kea Rangers - Shortly after its founding in the fall of 2000, OMKM established the ranger program to provide daily oversight of activities on UH managed lands; to protect the resources and to provide for public safety. A key responsibility is informing visitors about the cultural, natural and scientific significance, as well as the hazards of visiting the mountain. They conduct daily patrols between mid-level (9,200') facilities and the summit. Patrol reports are submitted daily.

Rangers perform a variety of other duties including providing emergency assistance, assisting stranded motorists, coordinating litter removal, conducting trail maintenance, inspecting the observatories for compliance with their Conservation District Use Permits, and providing visitors with cultural information about Maunakea. <http://www.malamamaunakea.org/management/mauna-kea-rangers>

At this time, anyone not present at 1:00 p.m. may not be able to ascend the Mountain that day.

During the time these rules are being imposed on spiritual practitioners, the road up to the summit is open to astronomers, water delivery trucks, nitrogen delivery trucks, and others with no limitations.

In response to questions, the Rangers seem unclear as to who is issuing orders that impose the restrictions on spiritual practices on the Mountain.

When people tell the Rangers that they want to go up the Mountain for spiritual reasons, the Rangers refer them to the Protectors to determine whether they are qualified as spiritual practitioners.

The Protectors claim no such capacity on their part to determine who is legitimately engaging in spiritual practice.

Argument

In this case, there would seem to be little need for extensive discussion prior to reaching a conclusion that the Temporary Restraining Order should issue.

The State is restricting the access of spiritual practitioners to a site where spiritual practice takes place.⁵

At the same time, the State is allowing unlimited access to people ascending the Mountain for purposes other than spiritual practice.

The restrictions amount to discrimination on the basis of religious beliefs.

⁵ Those wishing to ascend the Mountain for spiritual purposes arrived later than 1:00 p.m. on Friday, July 3, 2015. The Ranger refused to allow them to ascend, so on that day the spiritual practitioners were denied any access to their sacred sites.

At the same time, the restrictions are an acknowledgement by the State that there is a legitimate spiritual practice taking place.

There could hardly be a more compelling reason for judicial intervention to protect the rights of the spiritual practitioners as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

The University of Hawai'i, a State institution, signed a lease with the TMT for the land on Mauna a Wakea.

The website of the University of Hawai'i 'Imiloa Astronomy Center states:

Cultural Significance

"The Mountain of Wākea

The original name of Maunakea is *Mauna a Wakea*, or 'Mountain of Wakea.' In Hawaiian tradition *Wakea* (sometimes translated in English as 'Sky Father') is the progenitor of many of the Hawaiian Islands, and of the Hawaiian people. This mountain is his piko, or the place of connection where earth and sky meet and where the Hawaiian people connect to their origins in the cosmos.

'Realm of the gods'

As a sacred site, many of the physical features and environmental conditions of the mountain are associated with Hawaiian gods and goddesses. *Lilinoe*, *Poliahu*, and *Waiiau* are just a few of the deities associated with this place.

The summit of Maunakea was considered a *wao akua*, or 'realm of the gods' and was therefore visited only rarely by humans."

<http://www.imiloahawaii.org/60/cultural-significance>.

The heading "Cultural Significance" should really be Spiritual Significance. That statement says that the summit was considered to be the "realm of the gods." The use of the word was is an attempt to characterize the spiritual practice in question as no longer a practiced faith.

As shown in the Declaration of Declaration of Frank Kamealoha Anuumealani Nobriga, Kahuna of the Temple of Lono, Exhibit 2 and Exhibits A through C thereto, the traditional faith practice is alive and well.

Because the traditional faith is still practiced, the State is required to demonstrate some compelling purpose for placing such a heavy burden on the practice of the traditional faith as are found in the restrictions set forth above. See e.g. *Employment Div. v. Smith*, , 494 U.S. 872, 878-82 (1990); *Burwell v. Hobby Lobby Stores*, 134 S. Ct. 2751, 2760-61 (2014).

The burden becomes even higher when the State action is tantamount to denying access to a spiritual site.

The Constitution does not permit government to discriminate against religions that treat particular physical sites as sacred, and a law prohibiting the Indian respondents from visiting the Chimney Rock area would raise a different set of constitutional questions.

Lyng v. Northwest Indian Cemetery Prot. Assn, 485 U.S. 439, 453 (1988).

The discrimination shown by the State is a reflection of similar disrespect found elsewhere. The Mauna a Wākea controversy surfaced the continuing bigotry towards the traditional faith. See Exhibit 2.

<http://www.civilbeat.com/2015/04/the-science-based-faith-of-the-hawaiian-people/>

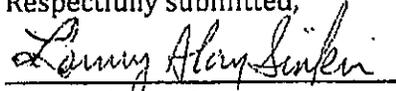
As the Kahuna states: "The challenge is about the right of a faith to be respected and practiced in its own homeland." Exhibit 1, Exhibit D at 2.

Conclusion

The severe restrictions the State placed on spiritual practitioners accessing

Mauna a Wakea for spiritual purposes are without minimal justification and clearly violate the constitutionally protected rights of the practitioners.

Respectfully submitted,



Lanny Alan Sinkin
Counsel for Petitioner

Dated: July 3, 2015

DECLARATION OF LANNY ALAN SINKIN

I, LANNY ALAN SINKIN, do declare the following to be true and correct to the best of my knowledge and belief.

1. On June 24, 2015, I was present on Mauna a Wakea from early in the morning until late in the afternoon.
2. I was present on the Mountain in my capacity as Ali'i Mana'o Nui (Chief Advocate and Spiritual Advisor) to Ali'i Nui Mō'i (High Chief/King) Edmund Keli'i Silva, Jr.
3. I was also present on the Mountain in my capacity as a haumana (student) in the Temple of Lono.
4. That day, I also served as a legal observer for the Protectors of Mauna a Wakea.
5. Hundreds of people gathered to protect the Mountain and prevent what they considered desecration that would result from construction of the Thirty Meter Telescope.
6. The construction crew was first preceded by County of Hawai'i police officers.
7. From the 9,000 foot level and continuing up the mountain, hundreds of Protectors of Mauna a Wakea blocked the progress of the convoy.
8. While in the County jurisdiction, the moving blockade and the County police proceeded peacefully up the mountain.
9. In the County jurisdiction, there was only one arrest.
10. At the 10,000 foot level, the jurisdiction changed to the DLNR.
11. In the DLNR jurisdiction, the officers became more aggressive and arrests increased.

12. In response to the more aggressive DLNR actions, Protectors further up the Mountain placed rocks and rock walls in the roadway to obstruct the progress of the convoy without requiring interaction between the Protectors and the DLNR officers.

13. When the convoy reached the rocks, DLNR made the decision to abandon the effort to reach the TMT site.

The convoy turned around and descended the Mountain.

14. On Thursday, July 2, I received an email that contained a posting on Facebook by one of the Protectors which stated:

As of yesterday, July 1, 2015, they restricted our access for religious purposes and said that we could only go up at 1:00 p.m. everyday to do pule and that there is a 10 person limit to going to the summit. They are depriving us of our rights as kanaka to our own 'āina. Article XII Section 7, HRS 7-1, First Amendment, 14th Amendment equal protection of the law, Hawaii Case Law etc. they want to play the blame game when they open the road for workers to go up but not us to pray. There are two vehicles in this picture that were behind us while we were asking the Ranger Bruce if we could go up to Wai'au [a sacred lake]. We are able to schedule earlier times if we need but the ranger said no today. They want to bring up the possibility of layoffs because of the road and us but really, they are looking for every excuse to make us look bad. THE ROAD IS CLEAR. Over 25 cars have gone up today already but they won't let us go up. Even the water trucks have gone up. ... I am spiritually hurt and so is everyone else.

16. That same day, I went to the 9,000 foot level of Mauna a Wakea to speak with the Protectors.

17. In those interviews, I was told the following:

a. By Friday, June 26, 2015, the Protectors had removed all the rock obstructions from the road.

b. Subsequently, Rangers with the Office of Mauna Kea Management informed those engaging in spiritual practices on the Mountain that they would only

be allowed to ascend the Mountain at 1:00 p.m.

c. The Rangers also stated that only ten people would be allowed to ascend the Mountain to engage in spiritual practice.

d. The Rangers also stated that groups ascending the Mountain to pule (pray) are required to be accompanied by a Ranger.

e. Some Rangers have stated that they will try to accommodate spiritual practitioners at times other than 1:00 p.m. Attempts to make such arrangements have not been successful.

f. At this time, anyone not present at 1:00 p.m. may not be able to ascend the Mountain that day.

g. During the time these rules are being imposed on spiritual practitioners, the road up to the summit is open to astronomers, water delivery trucks, nitrogen delivery trucks, and others with no limitations.

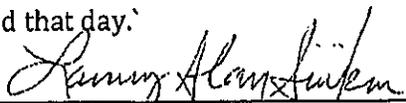
h. By the time I spoke with the Protectors in the late afternoon, approximately fifty vehicles had been allowed to ascend the Mountain.

h. In response to questions, the Rangers seem unclear as to who is issuing orders that impose the restrictions on spiritual practices on the Mountain.

i. When people tell the Rangers that they want to go up the Mountain for spiritual reasons, the Rangers refer them to the Protectors to determine whether they are qualified as spiritual practitioners.

j. The Protectors claim no such capacity on their part to determine who is legitimately engaging in spiritual practice.

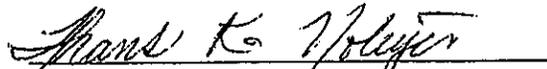
18. In a follow up telephone interview, one of the Protectors told me that those wishing to ascend the Mountain on Friday, July 3 had arrived later than 1:00 p.m., so the Rangers denied them the right to ascend that day.



Lanny Alan Sinkin

Declaration of Frank Kamealoha Anuumealani Nobriga

1. I, Frank Kamealoha Anuumealani Nobriga, do declare the following to be true and correct:
2. I am the Kahuna of the Temple of Lono.
3. The Temple of Lono is the men's temple of the Traditional Hawaiian Faith.
4. The Foundation of the Faith is the Four Gods – the Ocean, the Sun, the Earth, and the Fresh Water. See Exhibit A.
5. The Teaching Symbols of the Faith are the Square, representing the Four Gods; the Circle, representing the Ha or breath of God; and the Triangle, representing the Ancestors, the source of knowledge.
6. The Triangle is also the symbol of the central teaching for Human Beings: look into yourself, look at the Source, and look at the spiritual halo within.
7. These teachings are very simple and very deep, requiring years of self-exploration to determine their meaning for each individual.
8. Mauna a Wākea is the physical manifestation of the Triangle, standing as the highest reminder of the Faith.
9. That is why Mauna a Wākea is sacred in the Traditional Faith.
10. The Temple of Lono has a long standing involvement with the issue of sacred lands, particularly those forming a part of the spiritual land base of the faith. See Exhibit B.
11. The Temple of Lono also has a long standing involvement with those objecting to the desecration of Mauna A Wakea by the construction of telescopes. See Exhibit C.
12. The Temple of Lono and the Hale O Papa (women's temple) issued a statement related to the current controversy over the proposal to build the Thirty Meter Telescope on Mauna a Wakea.
13. In the eyes of the Temple, the disrespect shown for the traditional faith of the Hawaiian people is a matter of record for more than 100 years and most recently found expression through State of Hawai'i actions that either suppressed the traditional faith, limited traditional faith practice, or relegated traditional faith practitioners to a second class citizenship unprotected by the Constitution and laws of the United States.


Frank Kamehaloha Anuumealani Nobriga

Dated: July 3, 2015

Exhibit A to Declaration of Frank Kamehaloha Anuumealani Nobriga
dated May 25, 2015

KE A'O LOKO O LONO
(THE INNERMOST KNOWLEDGE OF LONO)

As haumana of the Temple of Lono, we have come to know and understand the knowledge of the staff of life, pa halau o te atua, maiola (healing light, the knowledge of the temple) and aumakua (huna mana - ancestral worship, the source of knowledge) as the root and bone of Hawaiian spiritualism based on the Pu'uhonua and its sovereignty. The time has come to share our mana'o.

The foundation of the pre-contact traditional Hawaiian religion as passed down orally from Mahea O Kalani Lono O Ka Makahiki and Kahuna Nu Pali Ku Samuel Hoopii O Kalani Lono o Ka Makahiki Po Paki, is Pa Halau O Te Atua (the foundation of the four gods - Ku, Kanaloa, Lono, Kane). We of the Temple of Lono believe in the four gods as the foundation of traditional Hawaiian religion.

KU, the god of the ocean, should not be confused with the Western interpretation of Kamehameha's aumakua Kukailimoku. Ku is chronologically recognized first in the relationship to the staff of life. From the ocean our evolutionary life began and we continue to receive sustenance from this source. We reverence the ocean as a natural force that can give life and take life. HE TU, HE TU, ATEA TE TAI O TU.

KANALOA, is the god of the sun, whose light gives energy to all living things on earth; whose source of heat evaporates the waters on earth. KANALOA spins the clouds in the atmosphere. We reverence the sun as a natural force that can give life and take life. HE TANAROA, HE TANAROA, LAU WILI E TA OHU.

LONO is the god of the 'aina that provides the staff of life for man; whose magnetic force draws down the water of life from the clouds down to earth creating an abundance of food for all living things. "Oh LONO of the air, you speak in many ways soft or wild you sound through birds and trees. Your revered music rings through waterfalls. Let us see you and let us hear you so that our source is as real as ourselves. Warm and brown and filled with seeds awaiting, may the sacred soil bring forth sweet fruit foods to strengthen and sustain us as we work. Oh LONO your face is seen in earth and rock." We reverence the 'aina as a natural force that can give life and take life. HE RONO, HE RONO, HE ULU TA MEA AI I TA POE HONUA.

KANE, the god of fresh water, completes the Kumulipo of the four gods. We reverence fresh water as a natural force that can give life and take life. HE TANE, HE TANE, TAHE TA WAI I TE TUAHIWI, HE RURI RURI I TA PO'O A TU, A TEA TE TAI O TU.

As we reverence earth, air, fire and water, may we each know and be Kumulipo. Receive and wisely use the huna mana and together we enjoy th reign of Mu.

Samuel Lono
TEMPLE OF LONO

Exhibit A
to Exhibit 2

From the Desk of
Lanny Sinkin
lanny.sinkin@gmail.com
April 27, 2015

Faith and the Mountain

The proposal to build the Thirty Meter Telescope on Mauna Kea takes place in a context of opposition to such telescopes stretching back for years. The Kahuna of the Temple of Lono asked me to share part of that history.

Ten years ago, well-known activist Hanalei (Hank) Fergstrom helped to organize opposition to the construction of six extensions, known as outriggers, to the Keck Telescope on the sacred mountain of Mauna Kea.

For many years and over numerous objections, the University of Hawaii had been leasing lands at the peak for the construction of telescopes. The outriggers were the latest telescopes being proposed.

Hank came to the Temple of Lono to request assistance in protecting the mountain from the abuse of the telescopes.

{ For insights into this faith, I would encourage you to read:
<http://kingdomofhawaii.info/wp-content/uploads/2015/04/Temple-of-Lono-and-Hale-O-Papa.pdf> }

For the Temple, the triangle (Ānu'u) of the mountain represented the ancestors, the highest source of wisdom.

The Temple responded that the appropriate way for Hank to ask assistance of the Ancestors would be to go into the Pu'uhonua O Honaunau at sea level, lands now within the United States National Park Service (NPS). As the Kahuna put it, the proper order was to lay the foundation within the Pu'uhonua before putting on the roof (Mountaintop).

The Temple provided guidance to Hank on the nature of the ceremony that should take place. That ceremony would include Moe Uthane and Hoike Po.

As part of that process, Hank notified the NPS that the Temple would be holding a ceremony within the Pu'uhonua

Later Hank called me to say that, in response to his notification, the NPS sent Hank an application for a permit to hold an event within the Pu'uhonua. He requested my legal opinion about the need for such an application.

Exhibit B
to Exhibit 2

I advised Hank that the Temple should not fill out the permit application. In my opinion, the Temple had a right, protected by the First Amendment to the United States Constitution, to practice their faith at their sacred site without asking permission of the United States Government. I suggested that the Temple send the NPS nothing more than a courtesy notice of the date and time of the Temple's visit.

Subsequently, I received a call from Palani Nobriga, the Kahuna of the Temple of Lono. I learned that the Temple never asked permission to practice its faith. The Temple would proceed with their ceremony without requesting a permit.

He invited me to attend the ceremony. I believe that everyone, including me, understood that my participation would be as an attorney prepared to challenge any attempt by the NPS to prevent the Temple from holding its ceremony.

The day of the ceremony, I was invited to participate as a haumana (student) of the Temple. The Kahuna, Hank, Keoni Choi, Kalei Victor, Jim McCrae, and myself participated in the ceremony.

The ceremony began with a procession from our campsite in the back of the Pu'uhonua to the Hale O Keawe (House of the Keawe Family) where the altar was located. The lead person blew the pū (conch shell) to call the Ancestors to witness what was happening.

Then came two others carrying long bamboo poles. These poles carried the flags of the Temple of Lono with the symbols of the sacred teachings.

Kahuna Nui Pali Ku Samuel Hoopii O Kalani Lono O Ka Makahiki Po Paki had created the flags, which contain symbols and colors, as a teaching tool for the next generation.

Then I followed with the offering bowl filled with fruit.

The last two completed the procession, with Jim stepping out occasionally to film the procession.

At the Hale O Keawe, we stood the flag poles up against the fence around the Hale and attached them with bungee cords. This ceremony was only the second time that the flags of the Temple had been raised.

Practitioners then removed the gate to the Hale and entered the area where the offering platform and the altar stood.

When the ceremony was complete, the practitioners left the Hale O Keawe to return to our campsite. We left the flags flying at the Hale O Keawe.

Soon thereafter, two Park Rangers came to ask whether we had put up some flags on the Hale O Keawe. They said that the flags looked very contemporary and not like a traditional spiritual practice.

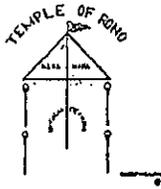
The Kahuna reminded them that the Catholic Church used to hold mass in Latin and now used English.

The Rangers left.

As it turned out, throughout the entire ceremony, even with the pū blowing, none of the Park Rangers had seen what we were doing.

While there is much more to tell of this tale, the ultimate outcome was that the outrigger telescopes were cancelled.
<http://www.newscientist.com/article/dn9702-judge-reverses-permit-for-new-hawaiian-telescopes.html#.VS4hXGa4NcQ>. That cancellation was nine years ago.

Hank is now back on the mountain providing guidance to those protecting the sacred mountain from yet another telescope. For the Temple and the people who came every year for seven years asking the Ancestors for help, the ceremony ten years ago was just the beginning. As it is said, once you ask the Ancestors for help, you cannot call it back. The work to prevent the abuse of the Ānu'u continues.



A Message from the Temple of Lono
And the Hale O Papa

A member of the Human Family emerges from darkness to take a place in the chain of life.

Human survival relies upon the fertility of the land and the oceans.

The Gods were Ku (the Ocean), Kanaloa (the Sun), Lono (the Earth) and Kane (the fresh water). These Gods established the faith and foundation upon which our customs and civilization were built. These four Gods give breath to all things and provide the staff of life to feed all of us. Because the essential role of food is preserving and sustaining life, we worship food. That is why our temples are square, a constant reminder of the faith in these four elements.

As an island people, we would always need a secure source of food. The land dedicated to growing food was cultivated as a sacred responsibility and protected and honored as a center of peace within the greater civilization. This land is the Pu'uhonua. The life of the land is preserved in righteousness.

The kuleana: The areas of responsibility. The King had the power to take a life. The Tahunas were the priests, the doctors, and the teachers. The maka'ainana were the people who kept the garden healthy and productive for seven generations.

The Hawaiian understanding of the hydrologic cycle served to inform the unfolding of the religion, a personal matter -- the huna mana for each household to pursue in a form that suited their avocation, first as an 'ohana and then their role in the garden. The study of the Gods led to an intricate and deep understanding of natural processes. We had more than a thousand years of observation.

Thus, when the missionaries arrived in the islands, they encountered a very sophisticated civilization founded on a strong faith rooted deeply in the people's understanding of natural processes. On that foundation of faith, the Hawaiians had developed a complex social system suitable for an island civilization and a highly effective economic system that sustainably supported hundreds of thousands of people.

Exhibit C
to Exhibit 2

While there were acts that Hawaiians considered wrong and even evil, there was no Devil in the islands. The missionaries taught the Hawaiians to believe in the Devil, superimposed the missionary Devil on to the traditional Hawaiian faith, and then taught the Christian Hawaiians to turn against their own faith as proof they rejected the Devil. The suppression included the passing of the Moe Kolohe Law, which banned numerous practices and customs, including the worship of ancestors – a central tenet of the faith. This law still stands. The passing of such a law today would be equivalent to forbidding our Asian brothers and sisters to hold Bon dances that honor their ancestral dead.

The suppression of the traditional faith has been a long-standing practice of the State of Hawaii. In a country that prides itself on the freedom of religion, this interplay of traditional faith with state disrespect is nothing new to the Temple of Lono and the faith of our people. The Temple found out a long time ago that the State of Hawaii does not think we are a people of faith. If they did our Temples wouldn't be historical sites for tourists.

In 1978, based on the passage of United States Public Law 95-341, the Temple of Lono emerged from decades of suppression to reclaim the Pu'uhonua Lehua at Kualoa. For this law said that we, as a people of faith, had the right to our sacred lands. The Temple rebuilt the Ma Pele at Kualoa to reconnect with the practice of Moe Ohane -- talking to our ancestors.

The State of Hawai'i brought in its bulldozers to destroy Sam Lono's work and arrested him for camping without a permit. After years of forcing him through one court proceeding after another and spending hundreds of thousands of public dollars, the State levied a \$5 fine for the offense.

Do you see the people being arrested now on Mauna Kea because they are trying to protect that sacred mountain from the destructive actions of those seeking to put yet another telescope on sacred land?

The challenge is not about lease payments or terms. The challenge is about the right of a faith to be respected and practiced in its own homeland. The altar of the Temple of Lono is still in place at the Hale O Keawe in the Pu'uhonua O Honaunau. That Pu'uhonua, however, is now part of a national park operated as a tourist attraction by the United States National Park Service. The Temple is "allowed" to go into the Pu'uhonua to hold ceremony subject to the limitations of the park on the time and duration of worship.

The failure of the occupying power and even our own people to recognize the traditional faith of our people calls for a reconciliation. That reconciliation includes the recognition of the key role that the Pu'uhonua played in establishing the jurisdiction of the Kingdom.

Watching the Hawaiian landscape, the Temple of Lono witnessed various people stepping forward to reclaim the position of King or Queen. One measure of the validity of such a claim would be their relationship with the Pu'uhonua.

Only one embraced that relationship by acknowledging that the King's kuleana is based on the foundation of the Pu'uhonua. King Edmund Keli'i Silva, Jr. claimed his rightful position as protector and sovereign over the Pu'uhonua O Honaunau. The King put the issue of restoring the sacred land base directly before the National Park Service.

The King announced his intention to enter the Pu'uhonua and remain there for an extended period to engage in spiritual practice, seek reconciliation, and confirm his claim to the spiritual land base.

The response was to threaten to arrest the King should he over stay the time period the National Park Service would allow him to enter and remain on the Pu'uhonua.

The foundation of the faith in the Pu'uhonua reaches to the heights of Mauna Kea. From the sustenance of food provided by the Pu'uhonua to the realm of the Gods on Mauna Kea, the faith encompassed all.

When the time is right, the King, supported by the Temple of Lono and others who recognize the need to reconcile the religious schism created within the Hawaiian community by the teachings of the missionaries, will enter and reclaim the Pu'uhonua. On that day, a great step forward will take place in renewing the civilization that once provided an example of wise stewardship of our Earthly Garden.

Tahuna Frank Kamealoha Anuumealani Nobriga
Temple of Lono

Darlene Pabre
Hale O Papa

Civil Beat: Community Voice

<http://www.civilbeat.com/2015/04/the-science-based-faith-of-the-hawaiian-people/>

The Science-Based Faith of the Hawaiian People

Describing traditional Hawaiian faith beliefs as 'superstition' involving 'irrational fears of pagan deities' is a misrepresentation of those religious ideas.

April 13, 2015 • By *Lanny Sinkin*

There is a major controversy created by the initiation of construction of the Thirty Meter Telescope project on Mauna Kea, a mountain considered sacred by the Hawaiian people. Some comments on Civil Beat and other media websites about the nature of the controversy have revealed ignorance about the traditional faith of the Hawaiian people.

One commenter shared her perspective [<http://www.civilbeat.com/2015/04/why-everyone-should-support-the-telescope-construction-blockade/>] that the real issue was the legal obstacle to the telescope found in the conservation zoning status of the land. She noted that the law governing projects in conservation-zoned land prohibit projects with any significant environmental impact. That an 18-story building on 6 acres of land would have a significant impact seemed obvious to her. The violation of the law was equally obvious.

In making her case, however, she said that the issue was not “science versus superstition.” The use of the word “superstition” denigrated the traditional Hawaiian faith and demonstrated a lack of understanding about that faith. In that lapse of awareness and sensitivity, she perpetuated the division created within the Hawaiian community by the introduction of Christianity and the suppression of the traditional Hawaiian faith.

Another commenter supported his perspective [<http://www.civilbeat.com/2015/04/science-not-superstition-brought-polynesians-to-hawaii/>] with the following statement: “It was science, not the irrational fear of pagan deities and inanimate objects, which brought Polynesians to Hawaii.” This misrepresentation of the Hawaiian faith is stunning.

Yet another commenter shared his perspective [<http://www.bigislandchronicle.com/2015/04/08/commentary-nonviolence-at-its-best-on-mauna-kea/>] in the same “religion versus science” context. He wrote, “What science can tell us about our place in the universe is more honest, in at least the physical sense, than what any religion tells us, be it Christian, Hawaiian, Hindu, Muslim or Zoroastrian.”

First, he lumped all religions together as if they all share the same characteristics. The five religions he listed are quite diverse and divergent from each other in their character.

Relevant to the telescope discussion, the Hawaiian faith is science-based. The faith of the Hawaiian people is founded on the four Gods: the Sun, the Ocean, the Land and the Fresh Water. Those elements create and support life, including providing the food that keeps humans alive. Hawaiians worshipped food. That is why the true center of the Hawaiian faith is the Pu’uhonua, the protected area where growing food to feed the people was the primary kuleana or responsibility.

The Hawaiian religion was the practice of the individual implementing that faith into daily life. That practice was based on a highly sophisticated understanding of the natural world based on

more than 1,000 years of observation. The traditional Hawaiians understood more about the physical world than the Europeans who reached the islands, because achieving that understanding was a spiritual practice and obligation. That understanding was very much grounded in knowing “our place in the universe.”

In the Hawaiian cosmology, the spirit world was just as real as the physical world precisely because the spirit world reflected the Hawaiian understanding of the physical. Pele's moods reflect the observations of Pele's behavior. Accepting that connection between the physical and the spiritual gave the Hawaiians information and insights that are foreclosed to those who believe that science excludes a belief in realms science cannot measure with experiments that can be replicated.

The same commenter wrote, “Religion, originally, performed some of the same functions that science does: it offered explanations about who we are and where we came from.”

The Kumulipo — the Hawaiian creation chant — is a textbook on evolution long before Darwin presented that concept. In the Hawaiian practice, all life forms that came before Humans are ancestors. That is simply the logic of evolution. To honor that history, the Hawaiians included ancestor worship in their spiritual practice. Hawaiians had no problem understanding who they were or where they came from.

For a more thorough examination of the place for the Hawaiian faith and religion in today's discussion, I would encourage everyone to read the “Temple of Lono and Hale O Papa Statement” found at www.KingdomofHawaii.info in the section titled “Protecting the Sacred Mountain.”

<http://www.civilbeat.com/2015/04/the-science-based-faith-of-the-hawaiian-people/>

About the Author

Lanny Sinkin

Lanny Sinkin serves as ali'i mana'o nui or chief advisor to Edmund Keli'i Silva, Jr., ali'i nui mo'i or high chief/king of the Kingdom of Hawai'i. He is a writer, lecturer and commentator on a wide range of issues.

EXHIBIT 2

NOW COMES, FRANK KAMEHALOHA ANUUMEALANI NOBRIGA and files this Complaint seeking assistance from this Honorable Court in protecting the right of those embracing the traditional faith of the Hawaiian people to practice.

Jurisdiction

1. Plaintiff herein alleges that Defendants are suppressing the rights of those embracing the traditional faith of the Hawaiian people in violation of rights protected by the First and Fourteenth Amendments to the United States Constitution and in violation of 18 U.S.C. §242.
2. This Honorable Court has jurisdiction under 28 U.S.C. § 1331 (Federal Question).

Plaintiff

3. Petitioner is the Kahuna of the Temple of Lono, a traditional faith of the Hawaiian people.

Respondents

4. David Y. Ige is Governor of the State of Hawai'i and is named in his official capacity.
5. Suzanne Case is Chairperson of the State of Hawai'i Department of Land and Natural Resources (DLNR) and is named in her official capacity.¹

¹ The Department of Land and Natural Resources, headed by an executive Board of Land and Natural Resources, is responsible for managing, administering, and exercising control over public lands, water resources, ocean waters, navigable streams, coastal areas (except commercial harbors), minerals, and all interests therein. The department's jurisdiction encompasses nearly 1.3 million acres of State lands, beaches, and coastal waters as well as 750 miles of coastline (the fourth longest in the country). It includes state parks; historical sites; forests and forest reserves; aquatic life and its sanctuaries; public fishing areas; boating, ocean recreation, and coastal programs; wildlife and its sanctuaries; game management areas; public hunting areas; and natural area reserves.
<http://dlnr.hawaii.gov/about-dlnr/>

6. Kekoa Kaluhiwa is Deputy Director of DLNR and is named in his official capacity.
7. Gregory Mooers is Chair of the Office of Mauna Kea Management (OMKM) and is named in his official capacity.²
8. John Doe #1, yet to be identified, is also responsible for imposing rules or enforcing rules that restrict spiritual practice on Mauna a Wakea and is named in his or her official capacity.

Facts

9. This Honorable Court can take judicial notice that there is a major controversy over the proposal to build the Thirty Meter Telescope (TMT) on Mauna a Wakea, a mountain on the Island of Hawai'i.
10. Part of the basis for that controversy is the assertion by practitioners of the traditional Hawaiian faith that the mountain is sacred and that the construction of the telescope constitutes desecration of a sacred site.
11. On Wednesday, June 24, 2015, an attempt was made to bring a construction crew to the site of the TMT.
12. Hundreds of people gathered to protect the Mountain and prevent what they considered desecration.

² Office of Mauna Kea Management(OMKM) - The Maunakea Management Board provides the community with a sustained direct voice for the management of the Maunakea. The Board is comprised of seven members from the community who are nominated by the UH Hilo Chancellor and approved by the UH Board of Regents. The volunteer members represent a cross-section of the community and serve as the community's voice providing input on operations and activities, developing policies, reviewing and providing recommendations for land uses planned for Maunakea.

13. The construction crew was first preceded by County of Hawai'i police officers.
14. From the 9,000 foot level and continuing up the mountain, hundreds of Protectors of Mauna a Wakea blocked the progress of the convoy.
15. While in the County jurisdiction, the moving blockade and the County police proceeded peacefully up the mountain.
16. In the County jurisdiction, there was only one arrest.
17. At the 10,000 foot level, the jurisdiction changed to the DLNR.
18. In the DLNR jurisdiction, the officers became more aggressive and arrests increased.
19. In response to the more aggressive DLNR actions, Protectors further up the Mountain placed rocks and rock walls in the roadway to obstruct the progress of the convoy without requiring interaction between the Protectors and the DLNR officers.
20. When the convoy reached the rocks, DLNR made the decision to abandon the effort to reach the TMT site.
21. The convoy turned around and descended the Mountain.
22. By Friday, June 26, 2015, the Protectors had removed all the rock obstructions from the road.
23. Subsequently, Rangers with the Office of Mauna Kea Management informed those engaging in spiritual practices on the Mountain that they would only be allowed to ascend the Mountain at 1:00 p.m.³

³ Mauna Kea Rangers - Shortly after its founding in the fall of 2000, OMKM established the ranger program to provide daily oversight of activities on UH managed lands; to protect the resources and to provide for public safety. A key responsibility is informing visitors about the cultural, natural and scientific

24. The Rangers also stated that only ten people would be allowed to ascend the Mountain to engage in spiritual practice.

25. The Rangers also stated that groups ascending the Mountain to pule (pray) are required to be accompanied by a Ranger.

26. Some Rangers have stated that they will try to accommodate spiritual practitioners at times other than 1:00 p.m., although attempts to make such arrangements have not been successful.

27. At this time, anyone not present at 1:00 p.m. may not be able to ascend the Mountain that day.

28. During the time these rules are being imposed on spiritual practitioners, the road up to the summit is open to astronomers, water delivery trucks, nitrogen delivery trucks, and others with no limitations.

29. In response to questions, the Rangers seem unclear as to who is issuing orders that impose the restrictions on spiritual practices on the Mountain.

30. When people tell the Rangers that they want to go up the Mountain for spiritual reasons, the Rangers refer them to the Protectors to determine whether they are qualified as spiritual practitioners.

significance, as well as the hazards of visiting the mountain. They conduct daily patrols between mid-level (9,200') facilities and the summit. Patrol reports are submitted daily.

Rangers perform a variety of other duties including providing emergency assistance, assisting stranded motorists, coordinating litter removal, conducting trail maintenance, inspecting the observatories for compliance with their Conservation District Use Permits, and providing visitors with cultural information about Maunakea. <http://www.malamamaunakea.org/management/mauna-kea-rangers>

31. The Protectors claim no such capacity on their part to determine who is legitimately engaging in spiritual practice.

Relief

32. Plaintiff seeks relief in the form of a Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, attorneys' fees, and such other relief as the Court finds appropriate to prevent violations of the constitutional rights of traditional faith practitioners.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lanny Alan Sinkin". The signature is written in black ink and is positioned above a horizontal line.

LANNY ALAN SINKIN

Counsel for Plaintiff

DATED: July 6, 2015

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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that the above-referenced document was served upon the
following parties by email unless indicated otherwise:

JUDGE RIKI MAY AMANO (Ret.)
rma3cc@yahoo.com
Hearing Officer

JULIE H. CHINA, Deputy Attorney General
julie.h.china@hawaii.gov
*Counsel for the BOARD OF LAND AND
NATURAL RESOURCES*

J. DOUGLAS ING, ESQ.
douging@wik.com
ROSS T. SHINYAMA, ESQ.
rshinyama@wik.com
Watanabe Ing LLP
*Counsel for TMT INTERNATIONAL
OBSERVATORY, LLC*

MICHAEL CAIN
Office of Conservation and Coastal Lands
1151 Punchbowl Street, Room 131
Honolulu, HI 96813
michael.cain@hawaii.gov
*Custodian of the Records
(original + digital copy)*

RICHARD NAIWIEHA WURDEMAN, ESQ.
rnwurdeman@rnwlaw.com
*Counsel for Petitioners MAUNA KEA ANAINA
HOU; CLARENCE KUKAUAKAHI CHING;
FLORES-CASE OHANA; DEBORAH J.
WARD; PAUL K. NEVES; and KAHEA: THE
HAWAIIAN ENVIRONMENTAL ALLIANCE*

LINCOLN S.T. ASHIDA, ESQ.
isa@torkildson.com
NEWTON J. CHU, ESQ.
njc@torkildson.com
Torkildson, Katz, Moore, Hetherington &
Harris
*Counsel for PERPETUATING UNIQUE
EDUCATIONAL OPPORTUNITIES (PUEO)*

JOSEPH KUALII LINDSEY CAMARA
kualiic@hotmail.com

RICHARD L. DELEON
kekaulike@msn.com

HARRY FERGERSTROM
hankhawaiian@yahoo.com

CINDY FREITAS
hanahanai@hawaii.rr.com

WILLIAM FREITAS
pohaku7@yahoo.com

TIFFNIE KAKALIA
tiffniekakalia@gmail.com

BRANNON KAMAHANA KEALOHA
brannonk@hawaii.edu

GLEN KILA
makakila@gmail.com

JENNIFER LEINA 'ALA SLEIGHTHOLM
leina.ala.s808@gmail.com

LANNY ALAN SINKIN, ESQ.
lanny.sinkin@gmail.com
Representative for the Temple of Lono

C. M. KAHO'OKAHI KANUHA
kahookahi@gmail.com

KALIKOLEHUA KANAELE
akulele@yahoo.com

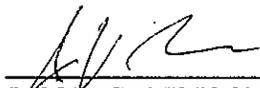
MEHANA KIHOI
uhiwai@live.com

MAELANI LEE
maelanilee@yahoo.com

STEPHANIE-MALIA TABBADA
stabbada@hawaiiantel.net

DWIGHT J. VICENTE
2608 Ainaola Drive
Hilo, HI 96720-3538
(no email; mailing address only)

DATED: Honolulu, Hawai'i, August 1, 2016.



IAN L. SANDISON
TIM LUI-KWAN
JOHN P. MANAUT
Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO