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Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF)	Case No. BLNR-CC-16-002
)	
A Contested Case Hearing Re Conservation))	
District Use Permit (CDUP) (HA-3568 for)	TEMPLE OF LONO REPLY TO
The Thirty Meter Telescope at the Mauna)	THE UNIVERSITY OF HAWAII AT
Kea Science Reserve, Kaohe Mauka,)	HILO'S OPPOSITION TO TEMPLE OF
Hamakua District, Island of Hawai'i,)	LONO'S MOTION FOR PARTIAL
)	SUMMARY JUDGMENT [DOC-78]
TMK (3) 4-4-015:009)	CERTIFICATE OF SERVICE
_____)	

**TEMPLE OF LONO REPLY TO THE UNIVERSITY OF HAWAII AT HILO'S
OPPOSITION TO TEMPLE OF LONO'S MOTION FOR PARTIAL SUMMARY
JUDGMENT [DOC-127]**

I. INTRODUCTION

In response to a relatively straight-forward motion for partial summary judgment filed by the Temple of Lono, the Applicant (UH) filed a pleading that is filled with false statements, engages in misdirection, proffers irrelevant argument, and is otherwise non-responsive to the motion. DOC-135 (UH Opp.).

The astonishing religious bigotry appearing in the pleading confirms the hard road the traditional faith of the Hawaiian people has had to travel simply to be allowed to practice without suppression.

II. ARGUMENT

A. UH defaults on challenging the sacredness of the Mountain summit.

The Temple of Lono motion sets forth seven simple facts as not being in dispute. DOC-127 (Memorandum at 3). One key fact is the Applicant's published admission that the summit of Mauna Kea is an especially sacred site. As the motion noted, the following appears on the Applicant's website:

"6. The website of the University of Hawai'i 'Imiloa Astronomy Center contains the following presentation:

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>. (emphasis added).

The Temple stresses that the quotation just set forward is from the website presentation by the Applicant. For purposes of the motion for partial summary judgment, that characterization of the summit of Mauna Kea is treated as a fact not in dispute. UH does not contest its own presentation. UH Opp. passim.

The Temple of Lono argues that the Applicant's presentation on the Imiloa Astronomy Center website is proof that the Applicant agrees that the mountain summit is so sacred that few people ever intruded into those lands.

The Applicant does not even mention, let alone discuss, the presentation on the Imiloa Astronomy Center website. U.H. Opp. passim. The Applicant makes no response, choosing to default on questioning the presentation.

There is, therefore, no need for an evidentiary hearing on the question whether the summit of the Mountain is sacred or especially sacred. The Temple is entitled to the judgment requested regarding the sacredness of the summit.

B. Unable to disavow its own presentation on the sacredness of the summit, UH seeks to attribute the presentation to the Temple.

Trapped by their own admissions regarding the sacredness of the summit, UH attempts to escape by pretending that the admission never took place and that the assertion of sacredness is a fact that can be challenged, despite the admission.

The first step in this false dance is to pretend that the Temple's observations of what the Applicant said are actually positions attributable to the Temple. For example, UH says:

The Temple alleges that Mauna Kea is "sacred" and "especially sacred."¹
UH Opp. at 2.

The attribution of this position solely to the Temple, however, ignores the existence and plain meaning of the Imiloa Astronomy Center presentation:

¹ In footnote 1 at page 2, UH writes: "So it is not just 'sacred'; it is 'especially sacred.'" The sarcasm is apparent. That sarcasm, however, masks the fact that the characterization is fully supported by the Applicant's website presentation.

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

That description puts the summit in a separate category from other sites, i.e. especially sacred. Again, that is what the Applicant said and no other party has disputed.

The second step in the false dance is to misrepresent the fact that is being offered as without dispute.

If the Hearing Officer does consider the Temple's first claim that the whole mountain is a sacred site for the Temple's purposes

UH Opp. at 2.

The fact at issue is a presentation by the Applicant's Imiloa Astronomy Center, not a Temple "claim." That presentation did characterize the entire mountain as a sacred site and had a special focus on the sacred nature of the summit, where the TMT proposes building their telescope.

C. UH falsely characterizes the Temple as recently created.

A second fact the Temple argued as not in dispute is the existence of the Temple itself.

UH fails to find any evidence placing that fact in dispute. In the process of trying, UH reveals its ignorance and strengthens the argument that the existence of the Temple is not in dispute.

For a foreign corporation to be abysmally ignorant about the traditional faith of the Hawaiian people is perhaps understandable.

For the University of Hawai'i to demonstrate the same abysmal ignorance before a State of Hawai'i agency is not understandable or acceptable.

UH distorts a quote from a federal judge about the Temple of Lono in order to make the false argument that the Temple only recently came into existence. UH

Opp. at 3. The quote in question is:

Frank Nobriga is an active force behind the Temple of Lono movement which began in 1971. Their purpose is to maintain a spiritual land bank, with temples throughout the islands. The first temple was established on Kahoolawe in 1976, having been conceived as a result of the involvement of Hawaiians in recapturing that island for civilian purposes. At the time he spoke for the video tape, there were a total of four such temples. The Temple of Lono is rediscovering the elements of ancient Hawaiian religion, including a four-god concept.

Honorable Samuel P. King, United States District Court, "Hawaiian Sovereignty,"

Hawaii Bar Journal, July 1999.

UH argues that the first sentence means that the Temple itself began in 1971.

UH Opp. at 3, n. 3.²

To make that argument, UH has to ignore what the Judge said, to wit:

The Temple of Lono is rediscovering the elements of ancient Hawaiian religion, including the four-god concept.

The Judge referred to the "Temple of Lono movement" as beginning in 1971, not the Temple of Lono itself.

The missionaries conducted a campaign of suppression against the Hawaiian traditional faith that forced the faith underground. The movement is the reemergence of the traditional faith to publicly assert its right to practice.

The Judge took note of the movement's first establishment of a temple on Kaho'olawe. UH chooses to misunderstand that this act by the Temple was the

² Children in Hawai'i know the story of Captain Cook arriving in the season of the God Lono in the year 1778. Apparently UH and their counsel skipped that class. The actual beginning of the Temple is hundreds of years in the past.

rededication of a prior temple site, not the first temple ever established. UH Opp. at 3, n. 4. The Temple clarified the restorative nature of the movement's act. DOC-127, Memorandum at 5, n.2.

The Judge then went on to acknowledge that the Temple had established three additional temples.

The Judge is clearly describing a process of renewal that demonstrates the traditional faith still exists and is still being practiced.

The Applicant acknowledges the ongoing movement to restore the Temple of Lono to its traditional sacred land base in the face of State suppression. UH Opp. at 13.

The Applicant affirms that the Temple is actively seeking to protect the rights of the traditional Hawaiian faith. UH Opp., Exhibits 1 and 2.

The Applicant, therefore, presents substantial evidence of the continued existence of the traditional faith.

UH has to misconstrue what Judge King had to say because his acknowledgment of the Temple of Lono and the subsequent history of Temple activities is dispositive of the question whether the Temple still exists. All the other evidence of Temple actions simply reinforces the conclusion that the existence of the Temple is a fact about which there is no dispute.

D. Unable to deny the sacredness of the Mountain or the existence of the Temple, UH resorts to *ad hominem* attacks on the Temple and its faith.

Having defaulted on the question of the summit's unique sacredness and failed to marshal any evidence proving that the traditional Hawaiian faith no longer

exists, UH then tries to create terrifying policy issues that should sway the Hearing Officer to deny the Temple's motion. UH Opp. 14-15.

These policy issues are irrelevant to determining whether the Temple correctly identified facts not in dispute and is entitled to the summary judgment that those facts support. As "policy issues," UH launches into a full scale assault on the Temple that is both unsupported by the facts and beyond the bounds of decency.

First, The proponents of the telescope paint a picture of themselves as benignly seeking cooperation.

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.

UH Opp. at 14.

UH then follows that benign description of their approach with the following attacks upon the Temple of Lono:

The Temple, by its papers and actions, rejects the 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.

UH Opp. at 14.

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 bring to the society of which it is a part. The Temple wants a religious servitude over all of Mauna Kea, for the purpose of advancing its own religious agenda.

Ibid. at 14-15 (emphasis in original).

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.

Ibid. at 15.

The Temple will try to use this proceeding to galvanize a religious movement. ... The Hearing Officer should not allow this proceeding to become a platform for the Temple to advance its religious agenda.

Id.

The goal of UH in these attacks is transparent. Calling the Temple a fundamentalist organization, characterizing the Temple's objections to the telescope as an attempt to impose religious hegemony on the entire mountain, and accusing the Temple of bringing harm to society are all assertions designed to portray the Temple as indistinguishable from ISIL or ISIS.

The Temple's fanaticism is thus the UH policy substitute for any actual dispute about the facts alleged by the Temple to support a limited finding that the summit is especially sacred and the Temple still exists.

This attempt to characterize the Temple as essentially terrorists arising would be humorous, were the situation not so mean-spirited. UH chastises the Temple for seeking respect and the right to practice free from suppression, including suppression by the State. That right is firmly anchored in the First Amendment to the United States Constitution. The persecution of the traditional faith is a historical stain on the record of all those engaging in and perpetuating that persecution.

Temple practitioners are far more like the early beleaguered Christians, attempting to protect their right to worship in the face of deadly opposition, than they are like the Knights Templar imposing Christianity on the Muslim world.

UH sees the words -- “right ... to be respected and practiced in its own homeland,” DOC 78, Memorandum at 6 – and completely misinterprets a faith struggling to survive as a faith intent on dominating others.

The whole foundation for this attack by UH is the refusal of traditional faith practitioners to simply agree to yet another telescope being built on a mountain they hold sacred. Their beliefs are irrelevant to UH, TMT, BLNR, and PUEO, if those beliefs do not validate TMT’s right to desecrate a sacred site.³

E. The UH challenges to the Temple’s standing are untimely.

As to the substantive challenges UH makes to the Temple on issues, UH Opp. 3-14, such as the impact of TMT on the practice of the Temple’s faith, UH chose to waive its right to object to any of the intervention requests, including the Temple’s intervention request. DOC-71 at 6 and Exhibit A.

Raising standing objections in the context of a response to a motion for partial summary judgment is an attempt to object to the intervenor status of the Temple long after the appropriate time for raising such objections has expired.

Furthermore, those waived objections are irrelevant to the facts identified by the Temple as not in dispute.

³ Just to emphasize the phenomenal disrespect the University has for the traditional faith of the Hawaiian people, UH puts Kahuna in quotation marks, as if the position is not real and Kahuna Nobriga not entitled to use that title. UH Opp. at 14, n. 38. Perhaps the Hearing Officer can discourage any further attacks.

III. Conclusion

Before TMT chose Mauna Kea as the site for their telescope, a study commissioned by the Gordon and Betty Moore Foundation from the Keystone Center for TMT concluded that:

Should TMT decide to pursue a Mauna Kea site, it will inherit the anger, fear, and great mistrust generated through previous telescope planning and siting failures and an accumulated disbelief that any additional projects, especially a physically imposing one like the TMT, can be done properly.

<http://www.protectmaunakea.org/#!2007-report-warned-about-risks-of-Mauna-Kea-telescope/cip6/5563c0c40cf2adc1ad5a4caa>

Despite having been warned that proposing TMT be placed on Mauna Kea would generate major political, spiritual, and environmental objections, TMT chose to proceed.

Whatever pacification efforts TMT made failed to prevent a massive outpouring of public opposition. The opponents of TMT reached a worldwide audience of supporters. That opposition reached a peak when 900 people blocked the road leading to the construction site. Numerous arrests took place. All construction activities were suspended.

Then came the blow of having the permit invalidated because the Board of Land and Natural Resources could not wait for a contested hearing before voting to grant the permit.

Now the BLNR, University of Hawai'i, TMT, and hangers on like PUEO are caught in a web of deceit, disrespect, falsehoods, and criminality woven by foreigners long ago, who could not keep their greedy hands off another nation's resources and people. The aka cords on injustice reach forward to ensnare those

who fail to make right the abuses of the past and, instead, seek to profit from the fruits of the poisonous tree.

The Temple of Lono stands with all those who seek justice and to prevent desecration of sacred sites.

The use of the word was by the Imiloa Astronomy center raised two threshold issues regarding the Temple of Lono's participation in this proceeding. The use of was implies both that the sacredness of the Mountain is no longer something people believe and that those who held that belief no longer embrace their faith or practice their religion.

The Temple filed its motion for partial summary judgment to get clarity on those two foundation issues.

The Applicant fails to join issue on the website presentation regarding summit sacredness or on the websites use of the word was. The Applicant fails to present evidence even questioning the continued existence and practices of the faith. These failures require the Hearing Officer to find for the Temple and to grant the partial summary judgment sought.

What those findings mean for the fate of the permit application is a matter yet to be addressed.

Based on the above and foregoing, the Hearing Officer should grant the partial summary judgment sought by the Temple.

Dated: August 2, 2016, Puako, Hawai'i, Kingdom of Hawai'i

_____/s/_____
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Kea Science Reserve, Kaohe Mauka,)
Hamakua District, Island of Hawai'i,)
TMK (3) 4-4-015:009)
_____)

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the **TEMPLE OF LONO REPLY TO THE UNIVERSITY OF HAWAII AT HILO'S OPPOSITION TO TEMPLE OF LONO'S MOTION FOR PARTIAL SUMMARY JUDGMENT [DOC-127]** were served on the following parties by eMail:

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Dated: August 3, 2016

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Dated: August 4, 2016

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