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Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF ) Case No. BLNR-CC-16-002  
 )  
A Contested Case Hearing Re Conservation ) **TEMPLE OF LONO MOTION TO**  
District Use Permit (CDUP) (HA-3568 for ) **FILE MOTION OUT OF TIME**  
The Thirty Meter Telescope at the Mauna )  
Kea Science Reserve, Kaohe Mauka, )  
Hamakua District, Island of Hawai'i, )  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_ )  
**TEMPLE OF LONO MOTION TO FILE MOTION OUT OF TIME**

Now comes the Temple of Lono and moves the Hearing Officer to allow the Temple to file a Motion to Dismiss out of time.

The Memorandum in Support of this motion argues good cause for allowing the Temple to file out of time.

A copy of the motion the Temple seeks to file is attached to the Memorandum as Exhibit 2.

Dated: August 8, 2016, Kurtistown, Hawai'i, Kingdom of Hawai'i

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Lanny Alan Sinkin  
Lay Representative for Temple of Lono

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BOARD OF LAND AND NATURAL RESOURCES

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Kea Science Reserve, Kaohe Mauka, )  
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TMK (3) 4-4-015:009 )  
\_\_\_\_\_)

**MEMORANDUM IN SUPPORT OF TEMPLE OF LONO MOTION  
TO FILE MOTION OUT OF TIME**

**I. INTRODUCTION**

On June 17, 2016, the Hearing Officer convened the Second Prehearing Conference. DOC-49.

Subsequently, the Hearing Officer issued Minute Order No. 13, DOC-115, which included a schedule for the filing of pre-hearing motions. Ibid. at 6-7.

The schedule set a deadline for pre-hearing motions of July 18, 2016, a deadline for filing responses to such motions of August 1, 2016, and the pre-hearing conference to consider the motions on August 5, 2016 at 10:00 a.m. Id.

On June 20, 2016, the Temple of Lono filed its "Temple of Lono Motion for Partial Summary Judgment," DOC 78. The motion sought partial summary judgment on two issues based on facts the Temple argued were not in dispute. Id.

On August 1 at 5:00 p.m., the University of Hawaii filed numerous documents, including the University's opposition to the Temple's motion for partial summary judgment. DOC-135, Exhibit 1.

The University's opposition was one of seven pleadings filed by the University on that same date. DOC-135 – DOC 141.

TMT International Observatory filed eleven pleadings on that same date. DOC-142 – DOC 152.

Perpetuating Unique Educational Opportunities, Inc. filed three pleadings on that same date. DOC-153 – DOC 155.

Besides pleadings filed by the Temple, there were nineteen other pleadings filed on or about that same date. DOC-156 – DOC-174

With the pre-hearing conference scheduled on August 5 at 10:00 a.m., there were only three days to review and/or respond to the thirty pleadings filed.

The Temple of Lono did file a response to one pleading, DOC-175 and a reply to one pleading. DOC-176.

In its DOC-135, the University launched a sweeping *ad hominen* attack on the Temple of Lono. See Exhibit 2.

Although there was no schedule for filing a reply, the Temple filed a partial reply that addressed the attack. DOC-176.

There was no opportunity for the Temple to bring the full implications of the attack to the attention of the Hearing Officer by means of a motion because the deadline for filing motions had passed.

The full implications of the attack go the heart of the decision the Hearing Officer is being asked to make in terms of recommending whether or not the University CDUA should be granted. See Exhibit 2.

The Temple of Lono, therefore, seeks the Hearing Officer's permission to file a motion out of time directly addressing the implications of the University attack for the decision being made in this proceeding.

### III. CONCLUSION

Given the absence of an opportunity to file any additional motions and the importance of the matter the Temple seeks to bring to the attention of the Hearing Officer, granting the Temple permission to file its motion out of time is warranted.

This proceeding is still in its initial phase such that any delay caused by granting the request to file out of time would have a minimal impact.<sup>1</sup>

For the above and foregoing reasons, the Temple moves the Hearing Officer to grant the Temple's request to file its motion, Exhibit 2, out of time.

DATED: August 7, 2016, Kurtistown, Hawai'i, Kingdom of Hawai'i

\_\_\_\_\_/s/\_\_\_\_\_  
Lanny Alan Sinkin  
Lay Representative for Temple of Lono

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<sup>1</sup> In fact, allowing the motion to be filed may have no impact on the schedule because the preparations for the hearing tentatively scheduled for October can continue while the motion is being heard and decided.

**From:** Renee K. Hatchie <rhatchie@carlsmith.com>

**Subject:** Case No. BLNR-CC-16-002

**Date:** August 1, 2016 5:06:46 PM HST

**To:** Brannon Kamahana Kealoha <brannonk@hawaii.edu>, C.M. Kaho`okahi Kanuha <kahookahi@yahoo.com>, Cindy Freitas <hanahanai@hawaii.rr.com>, Glen Kila <makakila@gmail.com>, Harry Fergerstrom <hankhawaiian@yahoo.com>, J. Douglas Ing <douging@wik.com>, Jennifer Leina`ala Sleightholm <leina.ala.s808@gmail.com>, Joseph Kualii Lindsey Camara <kualiic@hotmail.com>, Judge Riki May Amano <rma3cc@yahoo.com>, Julie H. China <julie.h.china@hawaii.gov>, Kalikolehua Kanaele <akulele@yahoo.com>, Lanny Sinkin <lanny.sinkin@gmail.com>, Lincoln S.T. Ashida <isa@torkildson.com>, Maelani Lee <maelanilee@yahoo.com>, Mehana Kihoi <uhiwai@live.com>, Michael Cain <michael.cain@hawaii.gov>, Newton J. Chu <njc@torkildson.com>, Richard Deleon <kekaulike@msn.com>, Richard Naiwieha Wurdeman <rnwurdeman@rnwlaw.com>, Ross T. Shinyama <rshinyama@wik.com>, Stephanie-Malia Tabbada <stabbada@hawaiiantel.net>, Tiffnie Kakalia <tiffniekakalia@gmail.com>, William Freitas <pohaku7@yahoo.com>

**Cc:** Ian L. Sandison <isandison@carlsmith.com>, Tim Lui-Kwan <tluikwan@carlsmith.com>, John P. (Pete) Manaut <jpm@carlsmith.com>

Attached please copies of the following documents filed in the above-referenced matter today:

1. The University of Hawai'i at Hilo's Witness List - Resubmitted Pursuant to Minute Order No. 13
2. **The University of Hawai'i at Hilo's Opposition to Temple of Lono's Motion for Partial Summary Judgment [Doc. 78]**
3. The University of Hawai'i at Hilo's in Opposition to Maelani Lee's Motion to Intervene Filed July 13, 2016 [Doc. 84]
4. The University of Hawai'i at Hilo's Opposition to Petitioners

- Mauna Kea Anaina Hou and Kealoha Pisciotta, Clarence Kukauakahi Ching, Flores-Case Ohana, Deborah J. Ward, Paul K. Neves and KAHEA: The Hawaiian Environmental Alliance's Motion to Strike Conservation District Use Application, HA-3569, dated September 2, 2010, and/or Motion for Summary Judgment, Filed July 18, 2016 [Doc. 94]
5. The University of Hawai'i at Hilo's Opposition to Petitioners' Motion to Disqualify BLNR's and Hearing Officer's Counsel, Filed July 18, 2016 [Doc. 95]
  6. The University of Hawai'i at Hilo's Opposition to Living Heir/Proper Party/Petitioner Stephanie-Malia Tabbada's Motion to Vacate Entire Process for Violation of BLNR and University of Hawai'i Fiduciary Trust, Rights, Responsibilities, Breach of Contract, etc. Mandated by the Law of the Land [Doc. 97]
  7. The University of Hawai'i at Hilo's Substantive Joinder in Support of Perpetuating Unique Educational Opportunities' Motion to Set the Issues, Filed July 18, 2016 [Doc. 99]
  8. The University of Hawai'i at Hilo's Objections to Immaterial, Irrelevant and Unduly Repetitious Witness Testimony

Thank you,

Renee K. Hatchie

**RENEE K. HATCHIE**  
**Legal Secretary | Carlsmith Ball LLP**

**Carlsmith Ball** LLP  
A LIMITED LIABILITY LAW PARTNERSHIP

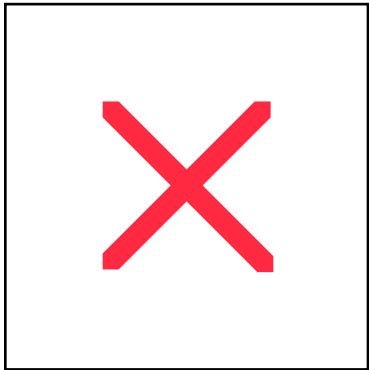
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Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF ) Case No. BLNR-CC-16-002  
 )  
A Contested Case Hearing Re Conservation ) **MOTION TO DISMISS CONSERVATION**  
District Use Permit (CDUP) (HA-3568 for ) **DISTRICT USE APPLICATION**  
The Thirty Meter Telescope at the Mauna ) **HA-3568; MEMORANDUM IN**  
Kea Science Reserve, Kaohe Mauka, ) **SUPPORT OF MOTION; CERTIFICATE**  
Hamakua District, Island of Hawai'i, ) **OF SERVICE**  
TMK (3) 4-4-015:009 )  
 )  

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**MOTION TO DISMISS CONSERVATION DISTRICT USE APPLICATION HA-3568**

Now comes the Temple of Lono and moves the Hearing Officer to dismiss the Conservation District Use Application HA-3568 based on the animus the Applicant has shown to one of the stakeholders the Applicant is constitutionally-required to protect.

The support for such a decision is found in the accompanying Memorandum

DATED: August 8, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
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Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF ) Case No. BLNR-CC-16-002  
)  
A Contested Case Hearing Re Conservation) **MEMORANDUM IN SUPPORT OF**  
District Use Permit (CDUP) HA-3568 for ) **MOTION TO DISMISS CONSERVATION**  
The Thirty Meter Telescope at the Mauna ) **HA-3568**  
Kea Science Reserve, Kaohe Mauka, )  
Hamakua District, Island of Hawai'i, )  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_)

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS  
CONSERVATION DISTRICT USE APPLICATION HA-3568**

**I. INTRODUCTION**

On June 20, 2016, the Temple of Lono filed its “Temple of Lono Motion for Partial Summary Judgment,” DOC 78. The motion sought partial summary judgment on two issues based on facts the Temple argued were not in dispute. *Id.*

On August 1 at 5:00 p.m., the University of Hawaii filed the University’s opposition to the Temple’s motion for partial summary judgment. DOC-135, Exhibit 1.

The University opposition contained a libelous<sup>1</sup> diatribe attacking the Temple of Lono.

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<sup>1</sup> While the Temple considers the libel to be irrelevant, false, and motivated by malice, it is the content of the libel, not the act of libel, that is the focus of this motion.

The animus and disdain the University showed for the Temple disqualifies the University from receiving a conservation district use permit for Mauna Kea.

## II. ARGUMENT

### A. The pleading at issue contains a libelous attack on the Temple of Lono.

#### 1. The Temple did not initiate the inclusion of faith issues in this proceeding in order to initiate a religious movement.

The Temple's Motion to Intervene, DOC-50, contains the following observation:

There is now a general understanding that the issues related to the construction of the Thirty Meter Telescope (TMT) include the spiritual issues raised by practitioners of the traditional faith of the Hawaiian civilization.

DOC-50 at 1.

In support of that general observation, the Temple cited an article in a newspaper of general circulation which stated:

The contested case involved the original six petitioners, mostly Native Hawaiian cultural practitioners who oppose the construction of the large telescope on what they say is sacred ground on Mauna Kea, and the applicant, UH-Hilo.

*Id.* quoting Hawai'i Tribune Herald.

The Temple further stated that it was a "[g]iven that issues related to the Traditional Hawaiian Faith are going to be an essential part of the contested case ...."

*Ibid.* at 2.

The University twists those simple factual observations into a nefarious plot by the Temple to inject religion into this proceeding.

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.

DOC-135 at 15 *citing* a statement in Temple's motion to intervene set forth above. (emphasis added).

The University urges the Hearing Officer not to "allow such diversions from the stated criteria to obtain a permit." *Id.*

The rights of the Traditional Hawaiian Faith have been part of this proceeding from its earliest stages years ago. As the Hawaii Supreme Court observed:

Thus, the Board was informed of multiple traditional Hawaiian cultural practices exercised in the project area and was aware of the project's potential adverse impact on the "spiritual nature of Mauna Kea" and the "cultural beliefs and practices of many."

*Mauna Kea Anaina Hou v. Board of Land and Natural Resources* (hereinafter "Anaina Hou"), 136 Hawai'i 376, 363 P.3d 224, 251 (2015) (Justice Pollack concurring).<sup>2</sup>

Justice Pollack provided an extensive discussion of the requirement to protect Native Hawaiian religious rights, noting the constitutional mandate. *Ibid.* at 248-251.

That presentation included the following:

In 1978, protection of traditional and customary Hawaiian rights was preserved within the Hawai'i Constitution. Article XII, Section 7 embodies the resolute promise by the State to "protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a [footnote omitted] tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right . . . to regulate such rights." Haw. Const. art. XII, § 7; see *In re 'Iao Ground Water Mgmt. Area High-Level Source Water Use Permit Applications*

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<sup>2</sup> The words culture and religion tend to get used interchangeably. That overlay obscures the traditional Hawaiian faith as a living practice in favor of treating that faith as a cultural artifact. A pattern emerged over time in which the Christian, Buddhist, and other religions were acknowledged as faiths, while the traditional Hawaiian faith was described as a culture. That labeling diminished both the importance of and protected nature of the traditional Hawaiian faith.

(*Iao*), 128 Haw. 228, 247, 287 P.3d 129, 148 (2012). So robust is this promise that even though Article XII, Section 7 carves out for the State the power to regulate the exercise of customary and traditional Hawaiian rights, this court underscored that "the State is obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible." *PASH*, 79 Hawai'i at 450 n. 43, 903 P.2d at 1271 n. 43.

*Ibid.* at 248 (emphases added).

For the Applicant to ignore this constitutional obligation and characterize the rights of the Traditional Hawaiian Faith practitioners as "diversions from the stated criteria to obtain a permit" demonstrates that the Applicant fails to understand or deliberately rejects the constitutional requirements imposed on them by their decision to seek the permit at issue in this proceeding.

To use that ignorance or rebellion as a basis for claiming the Temple is trying to start a "religious movement" by simply observing that religion is an issue, DOC 135 at 15, demonstrates the depth of the University's animus towards the Traditional Hawaiian Faith.

## **2. The Temple's opposition to the telescope based on faith grounds is perfectly reasonable.**

The Hawai'i Supreme Court has no difficulty perceiving the sacredness of Mauna Kea to the Traditional Hawaiian Faith.

Rising to a majestic 13,796 feet above sea level, Mauna Kea, the highest mountain peak in the Hawaiian Islands, is of profound importance in Hawaiian culture. The summit region is sacred to Native Hawaiians, and because of its spiritual qualities, traditional and customary cultural practices are exercised throughout the summit area."

*Anaina Hou* at 247.

The University's own website treats the Mauna as sacred and the summit as especially sacred. <http://www.imiloahawaii.org/60/cultural-significance>.

That Native Hawaiians would oppose the construction of a huge new telescope on their sacred mountain is not particularly difficult to understand.

Yet the University excoriates the Temple because “[t]he Temple, by its papers and actions, rejects that sharing of Mauna Kea.” DOC-135 at 14.<sup>3</sup>

The refusal of the Temple to simply accept the telescope means that the Temple is “fundamentally adversarial (and ardently absolutist).” *Id.*<sup>4</sup>

According to the University, the Temple intervening in this proceeding to challenge the application constitutes the Temple “using this proceeding as a platform to advance its own religious agenda.” *Id.*

**3. The University falsely characterizes the faith’s attempt to have the same respect as any other religion as the faith seeking some special status.**

The University persists in misrepresenting one of the Temple’s goals – to have the same right to practice without suppression that every other religion in Hawai’i has.

The discrimination *by the State* [against “the traditional faith”] is a reflection of similar disrespect found elsewhere.” The Mauna a Wākea [footnote omitted] 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.”

*Id.* (quoting the Temple’s pleadings in a separate lawsuit.) (emphasis added).

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<sup>3</sup> While arguing that the “papers and actions” of the Temple warrant such an attack, the University provides no evidence of either. That pattern of *ad hominem* attacks with no evidentiary support pervades the University pleading.

<sup>4</sup> The University has not launched similar attacks on any of the other parties who oppose the University’s application. Presumably their objection to sharing the Mauna with TMT is somehow not symptomatic of fundamentalism in the eyes of the University. It is precisely a faith objection that is singled out for attack.

The University twists that desire for equality into a drive for domination. According to the University, “the Temple seeks **state recognition** of the “traditional faith of the Hawaiian people.” Id. (emphasis in original).

Indeed the Temple seeks State recognition that the Temple is entitled to practice its faith just like any other religion. The University’s own pleading documents that the Temple considers the State to be one actor guilty of trying to suppress the Temple. Id. In its search for mutual respect, the Temple finds “discrimination by the State” as an obstacle. Id.; ibid. at 14, n.36.

That State recognition does not constitute any special treatment; the Temple seeks the equality under the law guaranteed by the Fourteenth Amendment to the United States Constitution and the freedom to practice its faith as guaranteed by the First Amendment to the United States Constitution.

Having created a false picture of what the Temple seeks in terms of its right to practice without suppression, the University then uses that false picture as a platform to launch an attack on the Temple as a fundamentalist organization.

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.

Ibid. at 14 (emphasis in the original).

The breathtaking and libelous leap that the University takes from the reality of a faith emerging from more than 120 years of oppression and trying to establish its right to practice without further oppression to the University’s fantasy of the faith as a fundamentalist organization that is intolerant, unable to compromise,

chooses conformity to doctrine over cooperation, and cares not if it inflicts harm on society while pursuing its goal of domination is evidence of a malice so deep as to be disqualifying.

The University does not stop there. According to the University, the “Temple wants a religious servitude over all of Mauna Kea, for the purpose of advancing its own religious agenda.” Ibid. at 14-15.<sup>5</sup>

Throughout the diatribe, the University fails to present any evidence that could possibly lead a reasonable person to conclude that the Temple of Lono is a fundamentalist organization trying to use this proceeding to generate a religious movement that will impose the beliefs of the Temple on the rest of the world.

As a reminder, the foundation of the Traditional Hawaiian Faith is the Four Gods -- the Ocean, the Sun, the Earth, and the Fresh Water. Those elements are worshipped because they provide the staff of life, i.e. food. The laws of the traditional faith attempt to maintain a harmonious relationship between Human activity and the Natural World, so that the needs of seven generations are considered in decision affecting the ecological systems. The practice of the faith is found in the religious practices of each family. There is nothing fanatical or even centralized in the religious practices of this faith. See DOC-50, Declaration of Frank Kamehameha Tamealoha Anuumealani Nobriga and Exhibits A, B, and C thereto.

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<sup>5</sup> By last count, the astronomers have built 13 telescopes on the Mauna while opponents have stopped one – the Keck Outriggers. If any one is trying to establish hegemony over the Mauna, the astronomers are in first place. The decades of running roughshod over the opposition of the local community to the astronomical invasion of the Mauna could be viewed as a scientific fundamentalism demonstrating intolerance, an unwillingness to compromise, etc. The University needs to look in the mirror.

**4. The University allegation that the Temple is using or would use this proceeding to achieve some form of domination or launch a religious movement is a canard.**

The University attributes all kinds of motivations and agendas to the Temple which are false and for which the University presents no evidence.

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

DOC-135 at 14-15.

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.

Id.

The Temple's religious agenda for this proceeding is therefore unconstitutional.

Id.

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

Id.

It is worth recalling that the motion that led to this extensive libel of the Temple sought two simple rulings: (1) that the traditional Hawaiian faith continues to exist and (2) that the summit of Mauna Kea is sacred. DOC-50.

Precisely how seeking those two ruling constitutes the pursuit of a fundamentalist religious agenda out to dominate the world is something the University fails to illuminate.



**5. In addition to all the other evidence of bigotry, a pair of quotation marks reveal the true attitude behind the attack.**

In DOC-135, the University has a citation to another case filed by the Temple.

Ibid. at 14, n. 38. In that footnote, the following appears:

(quoting “Kahuna” Nobriga of ToL).

Id.

The intent to use the quotation marks to delegitimize the Kahuna and the Traditional Hawaiian Faith is obvious.

There is no mistaking the sneer behind those quotation marks. The Temple assumes that the “lawyer”<sup>6</sup> who put those quotation marks around Kahuna had every intention of inserting his personal animus into the lengthy diatribe the University directed at the Temple.

**B. The libelous attack on the Temple of Lono disqualifies the University from receiving the permit that is the subject of this contested case.**

**1. The Board of Land and Natural Resources cannot given a permit to an Applicant who has clearly demonstrated an unwillingness to fulfill its constitutional obligations.**

As noted above, supra at p. 3-4, the Hawai’i Supreme Court explicitly and repeatedly noted that the Board of Land and Natural Resources has an obligation to proactively protect the traditional and customary rights of Native Hawaiians, including faith practitioners.

For the State to grant the permit requested herein to an Applicant who demonstrates clearly a disdain for and animus towards the Traditional Hawaiian Faith would be to violate the State’s constitutional obligations to the faith.

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<sup>6</sup> The Temple uses quotation marks around the word lawyer simply to illustrate the impact of adding such marks.

The attack on the Temple by the University is not found in some passing remark. The attack is a well-developed false narrative designed to bring discredit upon the Traditional Hawaiian Faith. The remarks are even given their own section in the University pleading. DOC-135 at 14-15 (“Policy Considerations for Motion”).

Nor is the attack the product of a moment of misguided passion. The Temple filed its motion on June 20, 2016. DOC-78. The University attacked on August 1, 2016. DOC-135.

The characteristics attributed to the Temple resonate quite clearly with the descriptions given to religious fundamentalists, who are considered possible enemies of the State.<sup>7</sup>

Coming from a respected State institution, the allegations are extraordinarily harmful.

While the University attempted to attack the character of the Temple, the Temple is not the entity seeking the permit. The character of the Temple is not even relevant to deciding the motion filed by the Temple.

Instead, the attack has clearly called into question the character of the Applicant to a degree that is disqualifying.

**2. The dismissal of the Application is the appropriate remedy.**

**a. The University is responsible for the actions of its attorneys.**

The United States Supreme Court is quite clear that the procedural actions taken by an attorney are attributable to the client.

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<sup>7</sup> Would the University’s pleading provided to the Department of Homeland Security cause that Federal agency to initiate an investigation into the Temple? That such a question can even be asked demonstrates the harmfulness of the University’s attack.

There is certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexplained conduct imposes an unjust penalty on the client. Petitioner voluntarily chose his attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have "notice of all facts, notice of which can be charged upon the attorney.

*Link v. Wabash R.R. Co.*, 370 U.S. 626, 633-34, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962) citing *Smith v. Ayer*, 101 U.S. 320, 326 (1879).

**b. There is no cure for the animus shown.**

The bell of bigotry rang loud and clear in this case. There is no way to undo what the Applicant has done. There are no sanctions that can repair the damage or ensure the demonstrated attitude will not continue to manifest in the future. There is no means for the University to restore confidence that it both understands and accepts its obligations to the Traditional Hawaiian Faith.

**c. Dismissal has been found appropriate in cases where the offense was far less.**

Dismissal of the application is an appropriate response to the disqualifying behavior and attitude manifested by the Applicant.

Dismissal of cases has taken place based on far less. *Henderson v. Duncan*, 779 F.2d 1421 (9<sup>th</sup> Cir 1986) (Dismissal with prejudice for failure to submit a pretrial order in accordance with the rules and in a timely fashion); *Franklin v. Murphy*, 745 F.2d 1221, 1232 (9<sup>th</sup> Cir.1984). (Case may be dismissed for failure to prosecute); *Anderson v. Air West, Inc*, 542 F.2d 522 (9<sup>th</sup> Cir. 1976) (Dismissal with prejudice for failure to prosecute).

In this case, what is fundamental is the obligation of the Applicants and the irreparable violation of that obligation found in the attack.

### **III. Conclusion**

The University has irrevocably tainted its Application at issue in this proceeding by engaging in a libelous attack on a party simply for that party's refusal to surrender its rights to the University.

That the party libeled is a Traditional Hawaiian Faith in a proceeding where the rights of that faith are at issue makes the offence even more serious.

That the University has an affirmative and constitutional obligation to respect and protect the party that the University chose to libel makes the University's action fatal to this application.

The dismissal of the application is the only sufficient remedy.

DATED: August 8, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
Lanny Alan Sinkin  
Lay Representative for the Temple of Lono

**From:** Renee K. Hatchie <rhatchie@carlsmith.com>

**Subject:** Case No. BLNR-CC-16-002

**Date:** August 1, 2016 5:06:46 PM HST

**To:** Brannon Kamahana Kealoha <brannonk@hawaii.edu>, C.M. Kaho`okahi Kanuha <kahookahi@yahoo.com>, Cindy Freitas <hanahanai@hawaii.rr.com>, Glen Kila <makakila@gmail.com>, Harry Fergerstrom <hankhawaiian@yahoo.com>, J. Douglas Ing <douging@wik.com>, Jennifer Leina`ala Sleightholm <leina.ala.s808@gmail.com>, Joseph Kualii Lindsey Camara <kualiic@hotmail.com>, Judge Riki May Amano <rma3cc@yahoo.com>, Julie H. China <julie.h.china@hawaii.gov>, Kalikolehua Kanaele <akulele@yahoo.com>, Lanny Sinkin <lanny.sinkin@gmail.com>, Lincoln S.T. Ashida <isa@torkildson.com>, Maelani Lee <maelanilee@yahoo.com>, Mehana Kihoi <uhiwai@live.com>, Michael Cain <michael.cain@hawaii.gov>, Newton J. Chu <njc@torkildson.com>, Richard Deleon <kekaulike@msn.com>, Richard Naiwieha Wurdeman <rnwurdeman@rnwlaw.com>, Ross T. Shinyama <rshinyama@wik.com>, Stephanie-Malia Tabbada <stabbada@hawaiiantel.net>, Tiffnie Kakalia <tiffniekakalia@gmail.com>, William Freitas <pohaku7@yahoo.com>

**Cc:** Ian L. Sandison <isandison@carlsmith.com>, Tim Lui-Kwan <tluikwan@carlsmith.com>, John P. (Pete) Manaut <jpm@carlsmith.com>

Attached please copies of the following documents filed in the above-referenced matter today:

1. The University of Hawai'i at Hilo's Witness List - Resubmitted Pursuant to Minute Order No. 13
2. **The University of Hawai'i at Hilo's Opposition to Temple of Lono's Motion for Partial Summary Judgment [Doc. 78]**
3. The University of Hawai'i at Hilo's in Opposition to Maelani Lee's Motion to Intervene Filed July 13, 2016 [Doc. 84]
4. The University of Hawai'i at Hilo's Opposition to Petitioners

- Mauna Kea Anaina Hou and Kealoha Pisciotta, Clarence Kukauakahi Ching, Flores-Case Ohana, Deborah J. Ward, Paul K. Neves and KAHEA: The Hawaiian Environmental Alliance's Motion to Strike Conservation District Use Application, HA-3569, dated September 2, 2010, and/or Motion for Summary Judgment, Filed July 18, 2016 [Doc. 94]
5. The University of Hawai'i at Hilo's Opposition to Petitioners' Motion to Disqualify BLNR's and Hearing Officer's Counsel, Filed July 18, 2016 [Doc. 95]
  6. The University of Hawai'i at Hilo's Opposition to Living Heir/Proper Party/Petitioner Stephanie-Malia Tabbada's Motion to Vacate Entire Process for Violation of BLNR and University of Hawai'i Fiduciary Trust, Rights, Responsibilities, Breach of Contract, etc. Mandated by the Law of the Land [Doc. 97]
  7. The University of Hawai'i at Hilo's Substantive Joinder in Support of Perpetuating Unique Educational Opportunities' Motion to Set the Issues, Filed July 18, 2016 [Doc. 99]
  8. The University of Hawai'i at Hilo's Objections to Immaterial, Irrelevant and Unduly Repetitious Witness Testimony

Thank you,

Renee K. Hatchie

**RENEE K. HATCHIE**  
**Legal Secretary | Carlsmith Ball LLP**

**Carlsmith Ball** LLP  
A LIMITED LIABILITY LAW PARTNERSHIP

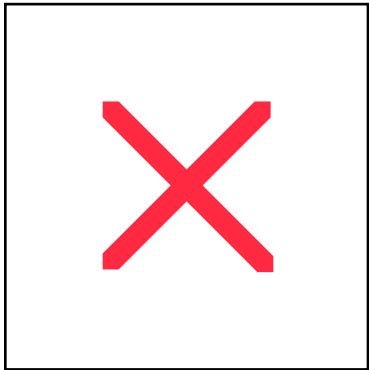
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Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF ) Case No. BLNR-CC-16-002  
)  
A Contested Case Hearing Re Conservation)  
District Use Permit (CDUP) HA-3568 for ) **CERTIFICATE OF SERVICE**  
The Thirty Meter Telescope at the Mauna )  
Kea Science Reserve, Kaohe Mauka, )  
Hamakua District, Island of Hawai'i, )  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the Temple of Lono Motion to File Motion Out of Time and Memorandum in Support with Exhibits 1 and 2 was served on the following parties by eMail:

"Julie China Deputy Attorney General Land and Transportation Division"  
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Dated: August 8, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
Lanny Alan Sinkin



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TMK (3) 4-4-015:009 )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the Temple of Lono Motion to File Motion Out of Time and Memorandum in Support with Exhibits 1 and 2 was served on the following parties by first class mail:

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Dated: August 8, 2016

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Lanny Alan Sinkin