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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 MOTION FOR**  
The Thirty Meter Telescope at the Mauna ) **SUMMARY JUDGMENT**  
Kea Science Reserve, Kaohe Mauka, ) **(DESECRATION)**  
Hamakua District, Island of Hawai'i, )  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_ )

**TEMPLE OF LONO MOTION FOR SUMMARY JUDGMENT (DESECRATION)**

Now comes the Temple of Lono, pursuant to Rule 56(a) of the Hawaii Rules of Civil Procedure, to move this Hearing Officer to grant a summary judgment on the Temple's claim that the construction proposed in the above-captioned proceeding would constitute desecration under State law and, therefore, the permit for such construction cannot be granted.

The Temple of Lono Memorandum in Support of this motion identifies material facts about which there is no genuine issue and which entitle the Temple of Lono to the summary judgments sought as a matter of law.

Respectfully Submitted,

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

Dated: September 17, 2016

Received  
Office of Conservation and Coastal Lands  
2016 Sept 17 2:11 pm  
Department of Land and Natural Resources  
State of Hawaii

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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 MEMORANDUM IN**  
The Thirty Meter Telescope at the Mauna ) **SUPPORT OF MOTION FOR**  
Kea Science Reserve, Kaohe Mauka, ) **SUMMARY JUDGMENT**  
Hamakua District, Island of Hawai'i, ) **(DESECRATION)**  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_ )

**TEMPLE OF LONO MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT (DESECRATION)**

**I. INTRODUCTION**

Herein the Temple of Lono argues that facts not in dispute support granting a summary judgment, which compels the dismissal of this case.

**II. STANDARD FOR GRANTING SUMMARY JUDGMENT**

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

*Fujimoto v. Au*, 95 Hawai'i 116, 136, 19 P.3d 699, 719 (2001)(citing *Amfac, Inc. v. Waikiki Beachcomber Inv. Co.*, 74 Hawai'i 85, 104, 839 P.2d 10, 22, reconsideration denied, 74 Hawai'i 650,843 P.2d 144 (1992)).

### III. ARGUMENT

#### A. The construction of the Thirty Meter Telescope on the Summit of Mauna a Wākea would constitute illegal desecration of a sacred site.

##### 1. The elements of the desecration statute are met by the proposed construction.

Hawai'i Revised Statutes (HRS) §711-1107 states:

(1) A person commits the offense of desecration if the person intentionally desecrates:

(a) Any public monument or structure; or

(b) A place of worship or burial; or

(c) In a public place the national flag or any other object of veneration by a substantial segment of the public.

(2) "Desecrate" means defacing, damaging, polluting, or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover the defendant's action.

(3) Any person convicted of committing the offense of desecration shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$10,000, or both.

The law relates the offence to the nature of the site – “[a] place of worship or burial;” the activities that are forbidden – “defacing, damaging, polluting, or otherwise physically mistreating” – and the impact of those activities – actions that will “outrage the sensibilities of persons likely to observe or discover the defendant’s action.” *Id.*

Pursuant to HRS §711-1107(1)(b), the law is applicable to a place of worship or burial.

The Supreme Court of Hawai'i has already made that determination.

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.

*Mauna Kea Anaina Hou v. Board of Land and Natural Resources* (hereinafter “*Anaina Hou*”), 363 P.3d 224, 248 (2015) (Justice Pollack concurring).

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.”

*Ibid* at 251 (2015).<sup>1</sup>

Pursuant to HRS §711-1107(2), the extensive and irreparable damage to the summit of Mauna a Wakea that the construction of the Thirty Meter Telescope will cause would constitute desecration, if the damage provokes outrage in those aware of the damage.

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<sup>11</sup> The Applicant’s own website for the Imiloa Astronomy Center accepts the sacred nature of the mountain and particularly the summit region.

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>

Just the attempt to begin construction “outrage[d] the sensibilities” of people familiar with the plans to build the telescope. That outrage is already proven by the numerous arrests of people blocking construction crews from reaching the construction site and the blockade of the construction caravan by hundreds of protestors. The Hearing Officer can take notice of these expressions of outrage. See e.g.

<http://www.bigislandvideonews.com/2015/06/25/video-mauna-kea-tmt-showdown-part-2-of-3/>

The proposed construction of the Thirty Meter Telescope meets the three part statutory test for finding desecration.<sup>2</sup>

**B. The Board of Land and Natural Resources does not have the authority to grant a permit to engage in actions that would violate the law.**

Because Mauna Kea is a sacred site, the construction of the Thirty Meter Telescope would have significant adverse impacts on that site, and there has already

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<sup>2</sup> This analysis is simply an application of the legal precedents and law to the facts of this case. The conclusion reached is not based on religious assertions by the Temple of Lono and does not arise from a “fundamentally adversarial (and ardently absolutist)” position of the Temple seeking to use “this proceeding as a platform to advance its own religious agenda.” DOC-135. Nor does this conclusion stem from any “intolerance and inability to compromise,” *id.*, on the part of the Temple. This secular legal argument is not related to any “conformity to doctrine” *id.*, on the part of the Temple. The previous Supreme Court rulings, the facts, and the statute speak for themselves.

At the same time, the application of the law to sites considered sacred must be uniform, i.e. a sacred site in the Traditional Hawaiian Faith must be treated the same under the desecration statute as the sacred sites of any other religion.

[I]f the purpose or effect of a law is to impeded the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect.

*Sherbert v. Verner*, 374 U.S. 398, 403 (1963) *quoting Braunfeld v. Brown*, 366 U.S. 599, 607 (1961) (internal quotations omitted) (emphasis added).

been an outpouring of public outrage over the proposed project, the Applicant is asking the Board of Land and Natural Resources to grant an application for a permit that will authorize actions falling within the statutory definition of desecration of the sacred site. Such an act is punishable by “imprisonment of not more than one year, a fine of not more than \$10,000, or both.” (HRS) §711-1107(3).

The Board of Land and Natural Resources does not have the authority to grant a permit to engage in illegal activity.

To the contrary, granting such a permit would make the Board complicit in a conspiracy to violate the law.

Under these circumstances, the Application should never have been accepted.

#### **IV. CONCLUSION**

The only appropriate response at this point is to dismiss the case based on the agency lacking the jurisdiction to hear an application for a permit to break the law and the authority to grant a permit to break the law.

Dated: September 17, 2016

Respectfully submitted,

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

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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 for Summary Judgment (Desecration)** was served on the following parties by eMail:

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Dated: September 17, 2016

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