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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 ) **PARTIAL SUMMARY JUDGMENT**  
Kea Science Reserve, Kaohe Mauka, )  
Hamakua District, Island of Hawai'i, )  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_)

**TEMPLE OF LONO MOTION FOR PARTIAL SUMMARY JUDGMENT**

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 partial summary judgment that the peak of Mauna Kea (Mauna a Wākea) is especially sacred to the traditional Hawaiian faith and that the traditional Hawaiian faith still exists.

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 partial summary judgments sought as a matter of law.

Respectfully Submitted,

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

Dated: June 20, 2016

BOARD OF LAND AND NATURAL RESOURCES  
FOR THE STATE OF HAWAI'I

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

**I. INTRODUCTION**

Pursuant to Rule 56(a) of the Hawaii Rules of Civil Procedure, the Temple of Lono seeks a partial summary judgment that the peak of Mauna Kea (Mauna a Wākea) is especially sacred to the traditional Hawaiian faith and that the traditional Hawaiian faith still exists.

**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. MATERIAL FACTS ABOUT WHICH THERE IS NO ISSUE**

There is no issue about the following material facts:

1. The subject matter of this contested case is a Conservation District Use Permit Application for the Thirty Meter Telescope Project to be built on the summit of Mauna Kea on the Island of Hawai'i filed by the University of Hawai'i at Hilo. DOC R-1.

2. Applicant, The University of Hawai'i at Hilo, has a Scientific Cooperation Agreement with the TMT International Observatory, LLC ("TIO") for TIO to construct and operate the Thirty Meter Telescope on Mauna Kea. DOC-2, Motion to have TMT International Observatory, LLC Admitted as a Party in the Contested Case Hearing at 2.

3. The University of Hawai'i at Hilo has subleased land to TIO for the construction of the Thirty Meter Telescope on Mauna Kea. Id.

4. The 'Imiloa Astronomy Center is an institution within the University of Hawai'i at Hilo. Exhibit 1; [www.ImiloaAstronomyCenter.org/104/mission-history](http://www.ImiloaAstronomyCenter.org/104/mission-history).

5. The Imiloa Astronomy Center is "an integral part of the University of Hawai'i at Hilo." Id.<sup>1</sup>

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<sup>1</sup> The Hearing Officer can take notice of the fact that her membership in the Imiloa Astronomy Center led to her impartiality being challenged precisely because the Center is an integral part of the Applicant. DOC-5; see also DOC-8 at 4 (Applicant suggests "in an abundance of caution, the Board may elect to pursue a service contract with the second ranked candidate" for Hearing Officer to avoid the appearance of a conflict); DOC-43 at 8 (the Applicant requested the Board to select a new Hearing Officer based on the issue of an appearance of conflict); DOC 62 at 8 (the Board of Land and Natural Resources found the membership not to be disqualifying "just because [the Hearing Officer] and her husband paid \$85 per year" to receive the benefits of being a member).

At no point did the Applicant argue that the 'Imiloa Astronomy Center is somehow independent of or separate from the Applicant.

At no point did the Board treat the Center as other than a part of the Applicant.

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 *Wai'au* 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."

Exhibit 2 (emphasis added); <http://www.imiloahawaii.org/60/cultural-significance>.

7. As shown in the Declaration of Frank Tamehameha Kamehaloha Anuumealani Nobriga, Kahuna of the Temple of Lono, and in the Exhibits A-C accompanying said Declaration, the traditional faith practice of the Hawaiian civilization is alive and well. DOC-50, Temple of Lono's Memorandum in Support of Motion to Intervene, Declaration of Tahuna Frank Tamehameha Kamehaloha Anuumealani Nobriga and Exhibits A-C thereto.

#### **IV. THE FACTS ABOUT WHICH THERE IS NO ISSUE ENTITLE THE TEMPLE OF LONO TO THE PARTIAL SUMMARY JUDGMENT SOUGHT.**

The website presentation of the Applicant's 'Imiloa Astronomy Center recognizes the summit of Mauna a Wākea as a sacred site and an area set aside by

the traditional Hawaiian faith as a *wao akua* or “realm of the gods.” Material Fact 5, infra. Such a designation seriously restricted Human intrusion in that area. Id.

The only caveat to that recognition is the use of the word was in the phrase “[t]he summit of Maunakea was considered a *wao akua* ....” Id. (emphasis added).

The Center’s assertion in the use of the word was is that the traditional faith is no longer practiced, so the acknowledged treatment of the summit of Mauna a Wākea as a special area set aside for spiritual reasons identifies a historical practice that no longer exists. Based on that premise, the construction of the Thirty Meter Telescope on the summit of Maunakea would arguably not constitute desecration of a sacred site. Hawai’i Revised Statutes § 711-1107.

However, Material Fact 6 infra. is proof that the assertion by the Applicant that that traditional faith is no longer practiced is factually erroneous.

Material Fact 6 establishes the truth that the traditional faith of the Hawaiian civilization is still being practiced.

Based on the indisputable facts presented herein, the Temple of Lono is entitled to a partial summary judgment that the summit of Mauna a Wākea is a sacred site of special significance in the traditional Hawaiian faith and to a partial summary judgment that the traditional Hawaiian faith is still practiced.

To find otherwise would simply be a continuation of the long practice of suppressing the traditional faith, a faith that is reemerging after a long night of oppression. See <http://www.civilbeat.org/2016/01/40-years-ago-on-kaoolawe-a-faith-is-reborn/>

As noted by the Kahuna:

The suppression of the traditional faith has been a long-standing practice of the State of Hawai'i. 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 Hawai'i 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 passage of United States Public Law 95-341, the Temple of Lono emerged from decades of suppression to reclaim the Pu'u honua 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 Uhane – 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.

DOC-50, Exhibit C to Declaration of Frank Kamehaloha Anuumealani Nobriga at 2.

The Hearing Officer can take note of the fact that the Mauna a Wākea controversy surfaced the continuing bigotry towards the traditional faith. See <http://www.civilbeat.com/2015/04/the-science-based-faith-of-the-hawaiian-people/>

A more subtle form of that discrimination appeared in an article written by an Office of Hawaiian Affairs Trustee claiming “the absence of the old priesthood” and that there is “no recognized priesthood to validate traditions and practices” because the “entire belief system went underground and was lost to many, if not most Hawaiians.” <http://www.civilbeat.com/2015/12/peter-apo-let-there-be-light-on-the-tmt/>

Mr. Nobriga is a Kahuna and a teacher of the ancient faith. He is recognized as such by such luminaries as Judge Samuel King who wrote:

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. ... 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, <http://wetserver.net/hawaiimatters/old/king.pdf><sup>2</sup>

### CONCLUSION

The judgment sought herein is affirmation of the right of a faith to be respected and practiced in its own homeland. Granting the Temple of Lono request for partial summary judgments will help begin to correct the injustices perpetrated since the missionaries arrived in the Hawaiian Islands.

Respectfully Submitted,

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Lanny Alan Sinkin  
Lay Representative  
Temple of Lono

Dated: June 20, 2016

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<sup>2</sup> The temple at Kaho'olawe preexisted the arrival of Captain Cook and was restored, not established, in 1976 by Temuela Hoopi Otarani Otamatahiti Tahuna Pari Tu Po Paki/Lono commonly referred to as Kahuna Sam Lono.

**EXHIBIT 1**

## Our History

‘Imiloa Astronomy Center of Hawaii, a part of the [University of Hawaii at Hilo](#), opened its doors on February 20, 2006.

The \$28 million, 40,000-square-foot [exhibition and planetarium complex](#) is located on nine acres in the University of Hawaii's Science and Technology Park, above the UH-Hilo campus.

Originally called the Maunakea Astronomy Education Center, Imiloa was developed in the mid-1990s by a team of educators, scientists and community leaders who understood the need for a comprehensive educational facility that would showcase the connections between the rich traditions of Hawaiian culture and the groundbreaking astronomical research conducted at the summit of Maunakea.

One of the key driving forces behind ‘Imiloa is U.S. Senator Daniel Inouye, who has helped secure federal funding at every step from planning to construction. His continued support has been vital to the growth of the facility.



*"Let us proceed forward, working together through open communication and, where necessary, compromise to allow for continued scientific exploration and discovery... [and] education that bridges astronomy and culture in a way that will inspire Hawaii's children to seek a career in science. I look forward to working with you."*

— The late U.S. Senator Daniel K. Inouye, October 1, 2001

Another driving force for ‘Imiloa has been UH-Hilo Chancellor Rose Tseng, who provided leadership, university resources and passion to ensure ‘Imiloa’s development and construction, and operating stability.



A Content Advisory Panel contributed to early discussions about what ‘Imiloa's interpretative mission would be. This group included:

Chad Baybayan	Michael West	Andrew Pickles	Walter Steiger
Wendy Light	James Kennedy	Rolf-Peter Kudritzki	Tetsuo Nishimura
Anthony Schinckel	Richard Chamberlain	Kalena Silva	Ed Stevens
Clay Bertelmann	Bobby Bus	Richard Crowe	Nainoa Thompson
Elisa Yadao	Robert Kihune	Valerie Takata	Larry Kimura

David Byrne	Brent Tully	Don Burciaga	Mike Mabery
Leilehua Yuen	Margaret Haig	Laura Kraft	Mike Shanahan
Ka'iu Kimura	Stephanie Macias	Robert McLaren	Bill Stormont

**EXHIBIT 2**

# Imiloa, Hilo Attractions | Mission & History

## Loina (Guiding Principles)

### KE ALA NU'UKIA: Our Mission

'Imiloa's mission is to honor Maunakea by sharing Hawaiian culture and science to inspire exploration.

**'IMILOA**

Exploration driven by a sense of wonder and imagination

**NA'AUAO**

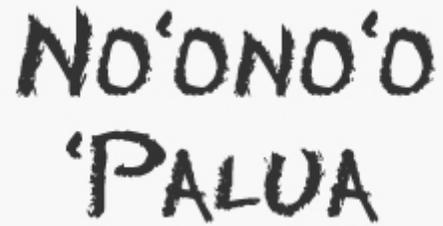
Education that is authentic, sparks creativity, and inspires children

**HO'OKIPA**

Aloha spirit that exemplifies respect, honesty and care

**ALULIKE**

Teamwork for continuous improvement



NO'ONO'O  
'PALUA

Bilingual fluency is an ideal to which we aspire

### **KA NU'UKIA: Our Vision**

'Imiloa is a place of life-long learning where the power of Hawai'i's cultural traditions, its legacy of exploration, and the wonders of astronomy come together to provide inspiration and hope for generations.

### **NĀ KUMUWAIWAI: Who We Are**

The 'Imiloa Astronomy Center is a gathering place that advances the integration of science and indigenous culture. Our diverse exhibits, programs and events harness leading technologies, environmental resources, and cultural practitioners to engage children, families, and communities in exciting ways. We are an integral part of the University of Hawai'i at Hilo, and therefore committed to improving the quality of life of the people of Hawai'i Island and state. Through strategic partnerships with programs of the University, Hawai'i-based observatories, local businesses and schools, we create opportunities that strengthen career awareness and workforce development, and contribute to our community sustainability.

See more on our [History](#), our [Building](#) and our [Educational Programs](#).

**EXHIBIT 3**



Photo by [Kirk Pu'uohau-Pummill](#)

## Cultural Significance

### The Mountain of Wakea

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 *Waiau* 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. The arduous trek to the top was made occasionally by royalty—among the last of those being Kamehameha III and Queen Emma. This was also a burial site for some royalty in ancient times. Today certain families still connect to this mountain by leaving their babies' *piko* (umbilical stubs) at sites that are historically significant to their *ohana* (family).

One place that many left their *piko* was Lake Waiau, which has important ecological features.

*Keanakakoi* is an ancient stone quarry near the summit area that produced highly prized stone *koi* (adzes) used for carving canoes and other utilitarian purposes. Formed when Maunakea was actively erupting below an ice cap, this basalt stone cooled quickly and under very high pressure, causing it to be extremely dense and strong. Research today is tracking the source of stone tools throughout Polynesia to learn how widely the stone from this mountain was disbursed.

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

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\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the Temple of Lono Motion for Partial Summary Judgment and Memorandum in Support of Motion for Partial Summary Judgment were served on the following parties by first class mail:

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Dated: June 20, 2016

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the Motion for Partial Summary Judgment and Memorandum in Support of Motion for Partial Summary Judgment were served on the following parties by eMail:

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Dated: June 21, 2016

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