

520884

WATANABE ING LLP
A Limited Liability Law Partnership

J. DOUGLAS ING #1538-0
ROSS T. SHINYAMA #8830-0
SUMMER H. KAIWE #9599-0

First Hawaiian Center
999 Bishop Street, 23rd Floor
Honolulu, Hawaii 96813
Telephone No.: (808) 544-8300
Facsimile No.: (808) 544-8399
E-mails: rshinyama@wik.com

Attorneys for
TMT INTERNATIONAL OBSERVATORY, LLC

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF

A Contested Case Hearing Re Conservation
District Use Permit (CDUP) HA-3568 for the
Thirty Meter Telescope at the Mauna Kea
Science Reserve, Kaohe Mauka, Hamakua
District, Island of Hawaii, TMK (3) 4-4-
015:009

Case No. BLNR-CC-16-002

**PROPOSED MINUTE ORDER NO. _____
DENYING TEMPLE OF LONO'S
MOTION TO DISMISS FOR LACK OF
JURISDICTION BASED ON
UNRESOLVED LAND CLAIMS (DOC
126); CERTIFICATE OF SERVICE**

**PROPOSED MINUTE ORDER NO. _____ DENYING TEMPLE OF LONO'S
MOTION TO DISMISS FOR LACK OF JURISDICTION
BASED ON UNRESOLVED LAND CLAIMS (DOC 126)**

On July 26, 2016 Temple of Lono filed a Motion to Dismiss for Lack of
Jurisdiction Based on Unresolved Land Claims (Doc 126) ("Motion"). In response to the
Motion, the following documents were submitted by various parties:

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2016 OCT -5 P 1:37

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Doc No.	Title	Date filed w/BLNR	Counsel/Party
149	TMT International Observatory, LLC's Opposition to the Temple of Lono Motion to Dismiss for Lack of Jurisdiction Based on Unresolved Land Claims (doc 126)	8/01/16	TMT International Observatory, LLC

The Motion was heard before this Hearings Officer on August 5, 2016, at a Pre-Hearing Conference held in Hilo. The following persons were present:

Julie China, Deputy Attorney General

Stephen Michael Cain, Staff Planner

Richard N. Wurdeman, Attorney for Mauna Kea Anaina Hou, et al.

Timothy Lui-Kwan, John Manaut, and Ian Sandison, Attorneys for the University of Hawaii-Hilo

J. Douglas Ing and Ross Shinyama, Attorneys for TMT International Observatory, LLC ("TIO")

Lincoln Ashida and Newton Chu, Attorneys for Perpetuating Unique Educational Opportunities Inc. ("PUEO")

Lanny Sinkin for Temple of Lono

Harry Fergerstrom

Richard DeLeon

Mehana Kihoi

C.M. Kahookahi Kanuha

Joseph Camara

Jennifer Leina`ala Sleightholm

Maelani Lee

Stephanie-Malia Tabbada

Tiffnie Kakalia

Glen Kila

Dwight Vicente

Brannon Kamahana Kealoha

Cindy Freitas

William Freitas

This Hearings Officer having considered the Motion, all other written and oral submissions of counsel and parties related thereto, the entire record, and for good cause shown,

IT IS HEREBY ORDERED that the Motion is DENIED. This Hearings Officer finds that the Motion and the requested relief is contrary to applicable case law, including the United States Supreme Court's decision in *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009). In that case, the United States Supreme Court rejected the same argument raised here that the alleged unlawfulness of the origins of the State of Hawai'i clouds or leaves unresolved the State's title to ceded lands. The Motion is also denied insofar as it raises non-justiciable political questions that are outside of this Hearings Officer's subject matter jurisdiction.

The deadline for submission of any **motion** to reconsider this minute order shall be submitted no later than **Thursday, October 13, 2016 at 4:30 p.m.** Any **responses to motions to reconsider** shall be submitted no later than **Friday, October 14, 2016 at 4:30 p.m.**

Any motions to reconsider this Minute Order shall be treated as a non-hearing motion unless otherwise ordered by this Hearings Officer.

DATED: Honolulu, Hawaii, _____.

Judge Riki May Amano (Ret.)
Hearings Officer

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

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

BLNR Contested Case HA-16-02

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the attached document was served upon the following parties by the means indicated:

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

Office of Conservation and Coastal
Lands
dlnr.maunakea@hawaii.gov

Carlsmith Ball LLP
isandison@carlsmith.com
*Counsel for the applicant
University of Hawai'i at Hilo*

Richard N. Wurdeman
RNWurdeman@RNWLaw.com
*Counsel for the petitioners Mauna
Kea Anaina Hou, Clarence
Kukauakahi Ching, Flores-Case
'Ohana, Deborah J. Ward, Paul K.
Neves, and Kahea: The
Environmental Alliance*

Kalikolehua Kanaele
akulele@yahoo.com

Mehana Kihoi
uhiwai@live.com

C. M. Kaho'okahi Kanuha
kahookahi@gmail.com

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

Torkildson, Katz, Moore,
Hetherington & Harris
lsa@torkildson.com
njc@torkildson.com
*Counsel for Perpetuating Unique
Educational Opportunities (PUEO)*

J. Leina'ala Sleightholm
leinaala.mauna@gmail.com

Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
*Representative for The Temple of
Lono*

Harry Fergerstrom
P.O. Box 951
Kurtistown, HI 96760

Stephanie-Malia:Tabbada
s.tabbada@hawaiiantel.net

Tiffnie Kakalia
tiffniekakalia@gmail.com

Glen Kila
makakila@gmail.com

Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

Brannon Kamahana Kealoha
brannonk@hawaii.edu

Cindy Freitas
hanahanai@hawaii.rr.com

William Freitas
pohaku7@yahoo.com

Richard L. DeLeon
kekaukike@msn.com

DATED: Honolulu, Hawaii, OCT 5 2016



J. DOUGLAS ING
ROSS T. SHINYAMA

SUMMER H. KAI AWE

Attorneys for TMT International Observatory LLC