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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

Contested Case Hearing Re Conservation
District Use Application (CDUA) HA-3568 for
the Thirty Meter Telescope at the Mauna Kea
Science Reserve, Ka'oho Mauka, Hāmakua,
Hawai'i, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

**[PROPOSED] MINUTE ORDER NO. ___
DENYING TEMPLE OF LONO
MOTION FOR PARTIAL SUMMARY
JUDGMENT [DOC. 78]; CERTIFICATE
OF SERVICE**

**[PROPOSED] MINUTE ORDER NO. ___ DENYING
TEMPLE OF LONO MOTION FOR PARTIAL SUMMARY JUDGMENT [DOC. 78]**

On August 5, 2016, a hearing on the Temple of Lono's ("**Temple**") *Motion for Partial Summary Judgment* [Doc. 78], filed on June 21, 2016 ("**Motion**"), was held in Hilo, Hawai'i at the YMCA Building, 300 West Lanikaula Street.

The following persons were present:

Julie H. China, Esq., Deputy Attorney General and William Wynhoff, Esq., Deputy Attorney General
Stephen Michael Cain, Staff Planner
Richard N. Wurdeman, Esq., for Mauna Kea Anaina Hou, for and with Kealoha Pisciotta, Clarence Kukauakahi Ching, Pualani Case, and E. Kalani Flores, with Keomailani Van Gogh.

Timothy Lui-Kwan, Esq., John P. Manaut, Esq. and Ian Sandison, Esq., for the University of Hawai'i-Hilo ("UH-Hilo"), with David Lonborg, Esq., Stephanie Nagata and Bob McLaren.

J. Douglas Ing, Esq. and Ross Shinyama, Esq. for TMT International Observatory, LLC. ("TIO"), with Sandra Dawson.

Lincoln Ashida, Esq. for Perpetuating Unique Educational Opportunities Inc. ("PUEO"), with Bill Brown.

Lanny Alan Sinkin for Lono Temple with Kahuna Nobriga

Kalikolehua Kanaele

Harry Fergerstrom

Richard DeLeon

Mehana Kihoi

C. M. Kaho'okahi Kanuha

Joseph Kualii Lindsey Camara

Jennifer Leina'ala Sleightholm

Maelani Lee

Stephanie-Malia Tabbada

Tiffnie Kakalia

Dwight J. Vicente

Brannon Kamahana Kealoha

Cindy Freitas

William K. Freitas

Ivy McIntosh (witness)

Wilma Holi (witness)

Patricia Ikeda (witness)

David Louie, Esq. for the Attorney General and Department of the Attorney General.

In relation to the Motion, the following documents were considered:

Doc. No.	Title	Date	Counsel/Party
135	The University of Hawaii at Hilo's opposition to Temple of Lono's motion for partial summary judgment [Doc. 78]; Declaration of counsel; Exhibits "1" – "2"; COS	08/01/2016	UH-Hilo
142	TMT International Observatory, LLC's joinder in (1) The University of Hawaii at Hilo's opposition to Temple of Lono's motion for partial summary judgment; and (2) The University of Hawaii 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,	08/01/2016	TIO

	rights, responsibilities, breach of contract, etc. mandated by the law of the land; COS		
154	Perpetuating Unique Educational Opportunities, Inc.'s joinder in The University of Hawaii at Hilo's opposition [Doc. 135] to Temple of Lono's motion for partial summary Judgment [Doc. 78]; COS	08/01/2016	PUEO
176	Temple of Lono reply to the University of Hawaii at Hilo's opposition to Temple of Lono's motion for partial summary judgment [Doc. 78]; COS	08/03/2016	Temple

The Motion seeks “partial summary judgment that the summit of Mauna a Wākea is a sacred site of special significance to the traditional Hawaiian faith and to a partial summary judgment that the traditional Hawaiian faith is still practiced.”

The Hearing Officer heard arguments opposing the Motion on the grounds that it seeks relief that would violate the establishment clause of both the U.S. and Hawai‘i Constitutions because it would require the Hearing Officer to recognize a religious servitude over the summit area of Mauna Kea and because such claims are unsupported by admissible evidence, and that summary judgment is an improper mechanism to determine factual issues.

The Motion, all related and oral submissions from counsels and/or parties, the Proposed Minute Order and all submissions related thereto, all applicable law, and the entire record having been considered by the Hearing Officer, and for good cause shown, the Hearing Officer finds that the Temple’s positions are not properly before the Hearing Officer in this contested case proceeding, and

IT IS HEREBY ORDERED that the Motion is DENIED.

The deadline for submission of any **motion** to reconsider this minute order shall be no

later than **Thursday, October 13, 2016, 4:30 pm.** Any **responses to motions to reconsider** shall be submitted no later than **Friday, October 14, 2016, 4:30 pm.** Any motions for reconsideration of this minute order shall be treated as a non-hearing motion unless otherwise ordered by this Hearing Officer.

DATED: Honolulu, Hawai'i, October __, 2016.

Judge Riki May Amano (Ret.)
Hearing Officer

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Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

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DATED: Honolulu, Hawai'i, October 5, 2016.



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