

Lanny Alan Sinkin  
P. O. Box 944  
Hilo, Hawai'i 96721  
(808) 936-4428  
[lanny.sinkin@gmail.com](mailto:lanny.sinkin@gmail.com)  
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 TO**  
The Thirty Meter Telescope at the Mauna ) **STRIKE FOR FAILURE TO SERVE**  
Kea Science Reserve, Kaohe Mauka, ) **OR EXTENSION OF TIME AND**  
Hamakua District, Island of Hawai'i, ) **RESCHEDULING OF HEARING; COS**  
TMK (3) 4-4-015:009 )  
)  
**TEMPLE OF LONO MOTION TO STRIKE FOR FAILURE TO SERVE OR EXTENSION**  
**OF TIME AND RESCHEDULING OF HEARING; COS**

On October 3, 2016, the Hearing Officer in this proceeding set a deadline of October 11 for all parties to file their Opening Statement, Witness List, Pre-Filed Statement, Exhibit List, and Exhibits and serve those pleadings on the remaining parties.

The Telescope International Observatory, LLC ("TIO") apparently filed its pleadings with the Custodian of Records and failed to serve copies on the remaining parties, or at least some of the remaining parties, including the Temple of Lono.

Based on the failure to serve, the Temple moves to strike the pleadings filed by TIO.

If the Hearing Officer decides to grant TIO additional time in which to serve the un-served parties, the parties now being served should receive an extension of

time to prepare for the hearing now scheduled for October 18 and the hearing date should be continued.

The Temple supports this motion with the accompanying Memorandum and Declaration of Counsel.

Dated: October 12, 2016

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

Lanny Alan Sinkin  
P. O. Box 944  
Hilo, Hawai'i 96721  
(808) 936-4428  
[lanny.sinkin@gmail.com](mailto:lanny.sinkin@gmail.com)  
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 ) **TEMPLE OF LONO MEMORANDUM**  
The Thirty Meter Telescope at the Mauna ) **IN SUPPORT OF MOTION TO STRIKE**  
Kea Science Reserve, Kaohe Mauka, ) **FOR FAILURE TO SERVE OR**  
Hamakua District, Island of Hawai'i, ) **EXTENSION OF TIME AND**  
TMK (3) 4-4-015:009 ) **RESCHEDULING OF HEARING;**  
) **EXHIBITS 1 AND 2; COS**  
\_\_\_\_\_)

**TEMPLE OF LONO MEMORANDUM IN SUPPORT OF MOTION TO STRIKE FOR  
FAILURE TO SERVE OR EXTENSION OF TIME  
AND RESCHEDULING OF HEARING**

**I. INTRODUCTION**

On October 3, 2016, the Hearing Officer set a deadline of October 11 at 4:30 p.m. for the filing of Opening Statements, Witness Lists, Pre-Filed Testimony, Exhibit Lists, and Exhibits.<sup>1</sup>

On October 11, 2016, at 4:26, the Temple of Lono received an email from Frances M. Soares, Secretary to Michael C. Bird, Esquire & Summer H. Kaiawe

---

<sup>1</sup> The Temple is one of the parties that lack the resources to purchase the expensive transcript for this proceeding. Despite repeated requests for the Hearing Officer to arrange access for all parties, those who lack the funds are still without access. We cannot, therefore, provide citations or excerpts of the record to support factual matters, such as statements in this pleading.

Esquire, in the law firm of Watanabe Ing LLP, Counsel for Telescope Astronomical Observatory LLC (“TIO”). Declaration of Representative (“Decl.”) ¶2, Exhibit A.

The email had no contents other than the identifying information of the sender and a disclaimer. Decl. ¶3.

The email had no attachments. Ibid. ¶4

On October 11, 2016, at 4:56, the Temple of Lono representative sent a reply to the Soares email, which said “Your email arrived empty.” Ibid. ¶5 , Exhibit B.

The Temple received no response to the email. Decl. ¶6 .

The Temple has received only one other communications from any representative of TIO. Ibid. ¶7 , Exhibit C (attachments omitted).

The Temple has received no service of any documents filed by TIO in response to the Hearing Officer’s deadline noted above. Decl. ¶8 .

The Temple did confirm with one other Intervenor that she, too, received the empty email and no service of any documents from TIO. Decl. at ¶9 .

On October 12, 2016, the Temple did find such pleadings on the DLNR website. Decl. at ¶10.

As of 8:00 p.m. on October 12, 2016, the Temple has not received service of the TIO pleadings. Decl. at ¶ 11.

## **II. ARGUMENT**

There appears to be no question that TIO failed to serve at least some parties, including the Temple of Lono, with the required filings due on October 11 before 4:30 p.m.

The Contested Case Hearing is scheduled to begin in less than one week, so the failure to serve is burdensome on the parties not receiving service.

The Hearing Officer has strictly enforced deadlines for filing, much to the detriment of the Temple of Lono. DOC-179, DOC-318, DOC-336, DOC-356.

Striking the TIO pleadings for failure to serve is warranted. Dismissal of cases has taken place based on far less. See *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 addition, TIO and the Applicant are closely aligned. TIO will follow the Applicant in the presentations at the beginning of the evidentiary proceeding.<sup>2</sup> Having the TIO pleadings available while preparing for the Applicant's presentation would certainly have been important.

Alternatively, should TIO demonstrate good cause for filing out of time and be allowed to file out of time, the Hearing Officer should extend the time for those parties not served by the amount of time between October 11, 2016 at 4:30 p.m. and whatever time the Hearing Officer gives TIO to serve those not served.

Furthermore, the date for the Contested Case Hearing should be extended by the same amount of time. TIO is obviously a major presenter in this case and has

---

<sup>2</sup> The Hearing Officer set the order for presentations at a hearing for which the transcript is unavailable to the Temple and has not issued a Minute Order for that hearing.

delayed delivery of its presentation to other parties through failure of service. TIO is also among the first presenters, following only the Applicant.

For the above and foregoing reasons, the Hearing Officer should strike the TIO pleadings, absent good cause, or, if good cause is shown, extend the time for those not previously served by the time lost and extend the date for the Contested Case Hearing by the same amount of time.

Dated: October 12, 2016

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

Lanny Alan Sinkin  
P. O. Box 944  
Hilo, Hawai'i 96721  
(808) 936-4428  
[lanny.sinkin@gmail.com](mailto:lanny.sinkin@gmail.com)  
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 ) **DECLARATION OF COUNSEL,**  
The Thirty Meter Telescope at the Mauna ) **EXHIBITS A AND B**  
Kea Science Reserve, Kaohe Mauka, )  
Hamakua District, Island of Hawai'i, )  
TMK (3) 4-4-015:009 );  
)  
\_\_\_\_\_ )

**DECLARATION OF REPRESENTATIVE**

I, LANNY ALAN SINKIN, declare the following to be true to the best of my knowledge and belief:

1. I represent the Temple of Lono in this proceeding.
2. On October 11, 2016, at 4:26, the Temple of Lono received an email from Frances M. Soares, Secretary to Michael C. Bird, Esquire & Summer H. Kaiawe Esquire, in the law firm of Watanabe Ing LLP, Counsel for Telescope Astronomical Observatory LLC ("TIO"), Exhibit A.
3. The email had no contents other than the identifying information of the sender and a disclaimer. Id.
4. The email had no attachments. Id.
5. On October 11, 2016, at 4:56, I sent a reply to the Soares email, which said "Your email arrived empty." Exhibit B.
6. The Temple received no response to my email.
7. The Temple has received only one communications from any representative of TIO, other than an email. Exhibit C.

8. The Temple has received no service of any documents filed by TIO in response to the Hearing Officer's deadline noted above.

9. I did confirm with one other Intervenor that she, too, received the empty email and no service of any documents from TIO

10 On October 12, 2016, I found the TIO pleadings on the DLNR website.

11. As of 8:00 p.m. on October 12, 2016, the Temple has not received service of the TIO pleadings.

Dated: October 12, 2016

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



# **EXHIBIT A**

**From:** Frances M. Soares <FSoares@wik.com>

**Subject:** BLNR Contested Case Hearing HA 16-002

**Date:** October 11, 2016 4:26:36 PM HST

**To:** Michael Cain <michael.cain@hawaii.gov>, DLNR Office of Conservation and Coastal Lands <dlnr.maunakea@hawaii.gov>, Ian L. Sandison <isandison@carlsmith.com>, Richard Naiwieha Wurdeman <RNWurdeman@RNWLaw.com>, akulele@yahoo.com, uhiwai@live.com, kahookahi@gmail.com, Joseph Kualii Lindsey Camara <kualiic@hotmail.com>and 22 more...

**Cc:** J. Douglas Ing <DougIng@wik.com>, Denise H. Kameda <DKameda@wik.com>, Summer H. Kaiawe <SKaiawe@wik.com>, Ross T. Shinyama <RShinyama@wik.com>, Ellen A. Yamamoto <EYamamoto@wik.com>, Charlene M. Moriwaki <CMoriwaki@wik.com>

## Frances Soares

Secretary to Michael C. Bird, Esq.

& Summer H. Kaiawe, Esq. Watanabe Ing LLP A Limited Liability

Law Partnership First Hawaiian Center, 23rd Floor 999 Bishop

Street Honolulu, HI 96813 Telephone: (808) 544-

8300 Facsimile: (808) 544-8399 e-mail: [fsoares@wik.com](mailto:fsoares@wik.com)

The information contained in this e-mail message and/or in the attachment(s) hereto is between attorney and client and, therefore, privileged/confidential. The use of this information is intended for the sole use of the individual and/or entity named as the recipient of this e-mail message. Printing, reproducing, disseminating, or distributing this e-mail message and/or attachment(s) hereto, in any manner whatsoever, is strictly prohibited without the prior approval of the named recipient hereunder. If the reader has received this communication in error, please contact the sender by calling collect at (808) 544-8300. Please also confirm in writing, addressed to the sender at the address listed above, that the e-mail message and/or attachment(s) have been destroyed and have not been printed, reproduced, disseminated, or distributed in any way. Your cooperation is appreciated.

EXHIBIT A

## **EXHIBIT B**

**From:** Lanny Sinkin <lanny.sinkin@gmail.com>  
**Subject:** Re: BLNR Contested Case Hearing HA 16-002  
**Date:** October 11, 2016 4:56:55 PM HST  
**To:** Frances M. Soares <FSoares@wik.com>

Aloha Frances,

Your email arrived empty.

Lanny

On Oct 11, 2016, at 4:26 PM, Frances M. Soares wrote:

## Frances Soares

Secretary to Michael C. Bird, Esq.  
& Summer H. Kaiawe, Esq.  
Watanabe Ing LLP  
A Limited Liability Law Partnership  
First Hawaiian Center, 23rd Floor  
999 Bishop Street  
Honolulu, HI 96813  
Telephone: (808) 544-8300  
Facsimile: (808) 544-8399  
e-mail: [fsoares@wik.com](mailto:fsoares@wik.com)

The information contained in this e-mail message and/or in the attachment(s) hereto is between attorney and client and, therefore, privileged/confidential. The use of this information is intended for the sole use of the individual and/or entity named as the recipient of this e-mail message. Printing, reproducing, disseminating, or distributing this e-mail message and/or attachment(s) hereto, in any manner whatsoever, is strictly prohibited without the prior approval of the named recipient hereunder. If the reader has received this communication in error, please contact the sender by calling collect at (808) 544-8300. Please also confirm in writing, addressed to the sender at the address listed above, that the e-mail message and/or attachment(s) have been destroyed and have not been printed, reproduced, disseminated, or distributed in any way. Your cooperation is appreciated.

**EXHIBIT B**

# **EXHIBIT C**

**From:** Ellen A. Yamamoto <EYamamoto@wik.com>

**Subject:** TMT/BLNR - TIO Errata re: Exhibit C-2

**Date:** October 12, 2016 4:06:13 PM HST

**To:** Michael Cain <michael.cain@hawaii.gov>, DLNR Office of Conservation and Coastal Lands <dlnr.maunakea@hawaii.gov>, Ian L. Sandison <isandison@carlsmith.com>, Richard Naiwieha Wurdeman <RNWurdeman@RNWLaw.com>, akulele@yahoo.com, uhiwai@live.com, kahookahi@gmail.com, Joseph Kualii Lindsey Camara <kualiic@hotmail.com>and 22 more...

**Cc:** J. Douglas Ing <DougIng@wik.com>, Ross T. Shinyama <RShinyama@wik.com>, Summer H. Kaiawe <SKaiawe@wik.com>, Denise H. Kameda <DKameda@wik.com>, Frances M. Soares <FSoares@wik.com>, Connilyn C. Rojas <CRojas@wik.com>, Charlene M. Moriwaki <CMoriwaki@wik.com>

All,

Enclosed herewith are two attachments (1) Errata re: Exhibit C-2 filed on behalf of TMT International Observatory, LLC; and (2) better quality copy of Exhibit C-2. The original exhibit sent to you yesterday that was included in TIO's Final Naming of Witnesses, and TIO's set of Exhibits 1-34 did not clearly show the dome shape in Figure 2 on page 6 of Exhibit C-2. Therefore, please use the exhibit attachment to replace the earlier version of this exhibit.

Thank you

Ellen

Ellen Yamamoto  
Paralegal  
Watanabe Ing LLP  
999 Bishop Street, 23<sup>rd</sup> Floor  
Honolulu, HI 96813-4428  
Tel: (808) 544-8300  
Fax: (808) 544-8398  
Email: eyamamoto@wik.com

**EXHIBIT C**

CONFIDENTIALITY NOTE: This transmission and the information contained in this transmission is private and confidential and is only intended to be sent to and received and used by the individuals or entities designated above. If the reader of this transmission is not the intended recipient, you are hereby notified that this transmission and its contents are proprietary to and the exclusive property of the sender's company, and that any use, dissemination, distribution, or copy of this transmission is strictly prohibited. If you have received this transmission in error, please immediately notify the sender by e-mail, and return the original transmission to the sender at the address above or destroy or delete said transmission. Thank You!

**EXHIBIT C**

Lanny Alan Sinkin  
P. O. Box 944  
Hilo, Hawai'i 96721  
(808) 936-4428  
[lanny.sinkin@gmail.com](mailto:lanny.sinkin@gmail.com)

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 MEMORANDUM IN SUPPORT OF MOTION TO STRIKE FOR FAILURE TO SERVE OR EXTENSION OF TIME AND RESCHEDULING OF HEARING** were served on the following parties by eMail on October 12, 2016:

Michael Cain <michael.cain@hawaii.gov>, Kealoha Pisciotto-Keomailani Von Gogh <keomaivg@gmail.com>, Clarence Ching <kahiwaL@cs.com>, Uncle Kalani Flores <ekflores@hawaiiantel.net>, Pua Case <puacase@hawaiiantel.net>, cordylinecolor@gmail.com, kealiikea@yahoo.com, Bianca Isaki <bianca@kahea.org>, Ian Sandison <isandison@carlsmith.com>, tluikwan@carlsmith.com, John P. (Pete) Manaut <jpm@carlsmith.com>, Lindsay N. McAneeley <lmcaaneeley@carlsmith.com>, T. Shinyama' <RShinyama@wik.com>, douging@wik.com <douging@wik.com>, mehana kihoi <uhiwai@live.com>, Kahookahi Kanuha <kahookahi@gmail.com>, Joseph Camara <kualiic@hotmail.com>, lsa@torkildson.com <lsa@torkildson.com>, njc@torkildson.com <njc@torkildson.com>, leina'ala s <leinaala.mauna@gmail.com>, Maelani Lee <maelanilee@yahoo.com>, Lanny Sinkin <lanny.sinkin@gmail.com>, akulele@yahoo.com <akulele@yahoo.com>, s.tabbada@hawaiiantel.net <s.tabbada@hawaiiantel.net>, tiffniekakalia <tiffniekakalia@gmail.com>, Glen Kila <makakila@gmail.com>, Brannon Kealoha <brannonk@hawaii.edu>, hanahanai@hawaii.rr.com <hanahanai@hawaii.rr.com>, pohaku7@yahoo.com <pohaku7@yahoo.com>, Ivy McIntosh <3popoki@gmail.com>, Kealamakia Jr. <mkealama@yahoo.com>, Patricia Ikeda



[peheakeanila@gmail.com](mailto:peheakeanila@gmail.com), Yuklin Aluli [yuklin@kailualaw.com](mailto:yuklin@kailualaw.com), Dexter Kaiama  
<cdexk@hotmail.com>

and will be served by first class mail on October 13, 2016 to:

1. Dwight J. Vicente  
2608 Ainaola Drive  
Hilo, Hawaiian Kingdom

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

3. Michael Cain, Custodian of Records  
Conservation and Coastal Lands  
1151 Punchbowl, Room 131  
Honolulu, Hawai'i 96813

Dated: October 12, 2016

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