

518928

WATANABE ING LLP
A Limited Liability Law Partnership

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

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2016 OCT 14 P 3:21

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

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

**TMT INTERNATIONAL
OBSERVATORY, LLC'S
MEMORANDUM IN OPPOSITION TO
TEMPLE OF LONO MOTION TO
STRIKE FOR FAILURE TO SERVE OR
EXTENSION OF TIME AND
RESCHEDULING OF HEARING FILED
OCTOBER 12, 2016; DECLARATION OF
ROSS T. SHINYAMA; EXHIBITS 1-7;
CERTIFICATE OF SERVICE**

**TMT INTERNATIONAL OBSERVATORY, LLC'S MEMORANDUM IN OPPOSITION
TO TEMPLE OF LONO MOTION TO STRIKE FOR FAILURE TO SERVE OR
EXTENSION OF TIME AND RESCHEDULING OF HEARING
FILED OCTOBER 12, 2016**

COMES NOW, TMT International Observatory, LLC ("TIO"), by and through its
counsel, Watanabe Ing LLP, and hereby submits this Memorandum in Opposition to Temple of
Lono ("TOL") Motion to Strike for Failure to Serve or Extension of Time and Rescheduling of

Hearing, filed October 12, 2016 (“Motion to Strike”). The Motion to Strike should be denied, inasmuch as TIO timely filed its pleadings and timely served those pleadings upon all parties to this proceeding.

I. DISCUSSION

In its Motion to Strike, TOL argues that TIO’s pleadings should be stricken because TIO failed to serve copies of the pleadings on some of the parties. TOL, however, is mistaken. TIO timely filed its pleadings, and timely served all parties in this proceeding.

Pursuant to the deadlines set forth by the Hearing Officer, TIO filed its Final Witness List and Written Direct Testimony of Witnesses, Pre-Hearing Statement, and Exhibit List and Exhibits 1 to 34 on October 11, 2016. The time-stamped copies of each of these pleadings illustrates that they were filed at 3:48 pm, 3:48 pm, and 3:49 pm, respectively, on October 11, 2016. See Exhibits 1, 2, 3, attached hereto.

On October 11, 2016, at 4:56 pm, via email correspondence, TIO served copies of the pleadings upon all parties to this proceeding. See Exhibit 4, attached hereto; Declaration of Ross Shinyama, attached hereto. In that email correspondence, Ellen Yamamoto of the law firm of Watanabe Ing LLP provided a link to each of the parties in this proceeding, which allowed those parties to download the pleadings. Note that the email address of TOL’s counsel, lanny.sinkin@gmail.com, is clearly included in this email correspondence. Several of the parties downloaded the documents using the email link, indicating that the email correspondence had been received and the link operational. There was no bounce-back message indicating that this email correspondence failed to reach any of the listed recipients, including TOL’s counsel, at lanny.sinkin@gmail.com.

Additionally, Michael Cain of the Board of Land and Natural Resources accessed the pleadings via the email link provided by Ellen Yamamoto on October 11, 2016. See Exhibit 6. Mr. Cain then placed TIO's pleadings on the DLNR website, so that all of the parties could access the documents. Accordingly, DLNR itself received the October 11, 2016 email correspondence from Ellen Yamamoto, again indicating that service had been successful.

In its Motion to Strike, TOL argues that email correspondence on October 11, 2016 from Frances Soares of the Watanabe Ing law firm "had no contents other than the identifying information of the sender and a disclaimer" and the email "had no attachments." A copy of this email is attached hereto as Exhibit 5, and was sent inadvertently to all parties in this proceeding. The email from Frances Soares did not contain any information or any indication that its purpose was service of the pleadings on the parties. The email from Frances Soares does not change the fact that on October 11, 2016, at 4:56 pm, TIO (via email correspondence from Ellen Yamamoto) provided an email link to the pleadings, fulfilling its obligations to serve all parties in this proceeding with copies of the relevant documents.

Notwithstanding the foregoing, on October 13, 2016, when TIO learned of TOL's Motion to Strike, counsel for TIO contacted counsel for TOL, indicating that service had been completed via email correspondence from Ellen Yamamoto on October 11, 2016, at 4:56 pm, and an offer was made to re-send the same email and link. See Exhibit 7, attached hereto.

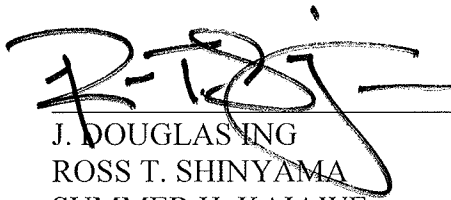
In light of the foregoing, the Motion to Strike should be denied. TIO timely served all parties to the proceeding, and upon learning of allegations from only one party that it had not received the email link with the documents, offered to re-send the pleadings within two days of the first email correspondence. The actions of TIO in serving the parties in this proceeding were in accordance with regular business practices, and do not warrant a striking of

the pleadings. Moreover, DLNR itself received the email link and posted all of the pleadings on its website for the parties to access. Consequently, there has been no prejudice whatsoever to TOL. Even if it had not received the October 11, 2016 email correspondence from Ellen Yamamoto, it clearly had access to the DLNR website. TOL's Motion to Strike is clearly intended to unnecessarily delay the proceedings, and is without merit.

II. CONCLUSION

For the foregoing reasons, and all reasons appearing of record, TIO respectfully requests that TOL's Motion to Strike be denied.

DATED: Honolulu, Hawaii, October 14, 2016.

A handwritten signature in black ink, appearing to read 'J. Douglas Ing', is written over a horizontal line. The signature is stylized and somewhat cursive.

J. DOUGLAS ING
ROSS T. SHINYAMA
SUMMER H. KAIawe
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

**DECLARATION OF ROSS T.
SHINYAMA; EXHIBITS 1-6;**

DECLARATION OF ROSS T. SHINYAMA

I, ROSS T. SHINYAMA, hereby declare and state as follows:

1. I am an attorney licensed to practice law in the State of Hawaii and am one of the attorneys representing TMT International Observatory LLC, a non-profit organization (“TIO”) in the above-captioned matter.

2. I make this Declaration based upon my personal knowledge and upon reliance of the files and records maintained by my office and in the normal and regular course of business.

3. Pursuant to the deadlines set forth by the Hearing Officer, TIO filed its Final Witness List and Written Direct Testimony of Witnesses, Pre-Hearing Statement, and Exhibit List and Exhibits 1 to 34 on October 11, 2016.

4. Attached as Exhibits 1, 2, and 3 are true and accurate copies of the time-stamped pages of each of these pleadings, illustrating that they were filed at 3:48 pm, 3:48 pm, and 3:49 pm, respectively, on October 11, 2016.

5. Attached as Exhibit 4 is a true and accurate copy of email correspondence, dated October 11, 2016 at 4:56 pm, from Ellen Yamamoto of my law firm, showing that TIO served copies of the pleadings upon all parties to this proceeding. In that email correspondence, Ellen

Yamamoto of my law firm provided a link to each of the parties in this proceeding, which allowed those parties to download the pleadings. Note that the email address of TOL's counsel, lanny.sinkin@gmail.com, is clearly included in this email correspondence. Several of the parties downloaded the documents using the email link, indicating that the email correspondence had been received and the link operational. There was no bounce-back message indicating that this email correspondence failed to reach any of the listed recipients, including TOL's counsel, at lanny.sinkin@gmail.com.

6. Attached hereto as Exhibit 6 is a true and accurate copy of an email notification indicating that Michael Cain of the Board of Land and Natural Resources accessed the pleadings via the email link provided by Ellen Yamamoto on October 11, 2016. With Mr. Cain's receipt of the documents, TIO's pleadings were placed on the DLNR website, so that all of the parties could access the documents. Accordingly, DLNR itself received the October 11, 2016 email correspondence from Ellen Yamamoto, again indicating that service had been successful.

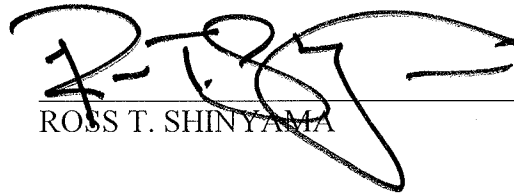
7. There was email correspondence on October 11, 2016 from Frances Soares of my law firm sent inadvertently to all parties. A true and accurate copy of this email is attached hereto as Exhibit 5. The email from Frances Soares did not contain any information or any indication that its purpose was service of the pleadings on the parties. The email from Frances Soares does not change the fact that on October 11, 2016, at 4:56 pm, TIO (via email correspondence from Ellen Yamamoto) provided an email link to the pleadings, fulfilling its obligations to serve all parties in this proceeding with copies of the relevant documents.

8. On October 13, 2016, when I learned of TOL's Motion to Strike, I emailed counsel for TOL, indicating that service had been completed via email correspondence from

Ellen Yamamoto on October 11, 2016, at 4:56 pm, and I offered to re-send the same email and link. Attached hereto as Exhibit 7 is a true and accurate copy of my email.

I, ROSS T. SHINYAMA, declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawaii, October 14, 2016.



ROSS T. SHINYAMA

521209

WATANABE ING LLP
A Limited Liability Law Partnership

J.DOUGLAS ING #1538-0
ROSS T. SHINYAMA #8830-0
SUMMER H. KAIawe #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: DougIng@wik.com

Attorneys for Defendant
TMT INTERNATIONAL OBSERVATORY, LLC

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 the
Thirty Meter Telescope at the Mauna Kea
Science Reserve, Kaohe Mauka, Hamakua
District, Island of Hawaii TMK (3) 4-4-015:009

**TMT INTERNATIONAL OBSERVATORY, LLC
FINAL WITNESS LIST and WRITTEN DIRECT
TESTIMONY OF WITNESSES CERTIFICATE OF
SERVICE**

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2016 OCT 11 P 3:48
BOARD OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

**TMT INTERNATIONAL OBSERVATORY, LLC's FINAL WITNESS LIST
AND WRITTEN DIRECT TESTIMONY OF WITNESSES**

TMT INTERNATIONAL OBSERVATORY, LLC ("TIO") by and through its attorneys,
WATANABE ING, hereby submits its final witness list, including the written direct testimony of
each witness, which TIO expects to call at the evidentiary hearing in the above-referenced
Contested Case matter.

EXHIBIT 1

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, Ka`ohe Mauka, Hāmākua
District, Island of Hawai`i, TMK (3) 4-4-
015:009

Case No. BLNR-CC-16-002

**TMT INTERNATIONAL
OBSERVATORY, LLC'S PRE-HEARING
STATEMENT; EXHIBIT "1";
CERTIFICATE OF SERVICE**

RECEIVED
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DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

EXHIBIT 2

WATANABE ING LLP
A Limited Liability Law Partnership

J. DOUGLAS ING #1538-0
ROSS T. SHINYAMA #8830-0
SUMMER H. KAIawe #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, Kahohe Mauka, Hamakua
District, Island of Hawaii, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002

TMT INTERNATIONAL OBSERVATORY, LLC'S
EXHIBIT LIST and EXHIBITS 1 to 34;
CERTIFICATE OF SERVICE

PARTY: TMT INTERNATIONAL OBSERVATORY, LLC

Exhibit No.	Description	Received Into Evidence
C-1	Testimony of Ed Stone	
C-2	Testimony of Gary Sanders	
C-3	Graphic showing Mitigation Measures Reduce Size and Visibility of TMT	

EXHIBIT 3

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2016 OCT 11 P 3:49

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Ellen A. Yamamoto

From: Ellen A. Yamamoto
Sent: Tuesday, October 11, 2016 4:56 PM
To: 'michael.cain@hawaii.gov'; 'dlnr.maunakea@hawaii.gov'; 'isandison@carlsmith.com'; 'RNWurdeman@RNWLaw.com'; 'akulele@yahoo.com'; 'uhiwai@live.com'; 'kahookahi@gmail.com'; 'kualiic@hotmail.com'; 'lsa@torkildson.com'; 'njc@torkildson.com'; 'leina.ala.s808@gmail.com'; 'maelanilee@yahoo.com'; 'lanny.sinkin@gmail.com'; 's.tabbada@hawaiiantel.net'; 'tiffniekakalia@gmail.com'; 'makakila@gmail.com'; 'brannonk@hawaii.edu'; 'hanahanai@hawaii.rr.com'; 'pohaku7@yahoo.com'; 'kekaukike@msn.com'; 'tluikwan@carlsmith.com'; 'jpm@carlsmith.com'; 'Imcaneeley@carlsmith.com'; 'ekflores@hawaiiantel.net'; 'kealiiea@yahoo.com'; 'keomaivg@gmail.com'; 'puacase@hawaiiantel.net'; 'bianca@kahea.org'; 'kahiwaL@cs.com'; 'cordylinecolor@gmail.com'
Cc: J. Douglas Ing; Ross T. Shinyama; Summer H. Kaiawe; Denise H. Kameda; Charlene M. Moriwaki
Subject: TMT/BLNR Case No. BLNR-CC-16-002
Attachments: Attachments

All,

Attached for your information are the following documents filed on behalf of TMT International Observatory, LLC:

- 1) TIO Prehearing Statement
- 2) TIO Final Witness List and Written Testimonies
- 3) TIO Exhibit List and Exhibits 1 thru 34

Please click on the link below to download the attachments.

ShareFile Attachments	
Title	Size
TIO EXH C-1.pdf	102.3 KB
TIO EXH C-10.pdf	36.2 KB
TIO EXH C-11.pdf	25.1 KB
TIO EXH C-12.pdf	1.2 MB
TIO EXH C-13.pdf	45.4 KB
TIO EXH C-14.pdf	1 MB
TIO EXH C-15.pdf	351.8 KB
TIO EXH C-16.pdf	310.4 KB
TIO EXH C-17.pdf	55.5 KB
TIO EXH C-18.pdf	122.7 KB
TIO EXH C-19.pdf	89.1

	KB
TIO EXH C-2.pdf	1.2 MB
TIO EXH C-20.pdf	100.3 KB
TIO EXH C-21.pdf	102 KB
TIO EXH C-22.pdf	110.9 KB
TIO EXH C-23.pdf	68.6 KB
TIO EXH C-24.pdf	1.6 MB
TIO EXH C-25.pdf	895.5 KB
TIO EXH C-26.pdf	2.7 MB
TIO EXH C-27.pdf	1.7 MB
TIO EXH C-28.pdf	1.2 MB
TIO EXH C-29.pdf	962.9 KB
TIO EXH C-3.pdf	94.4 KB
TIO EXH C-30.pdf	402.1 KB
TIO EXH C-31.pdf	622.8 KB
TIO EXH C-32.pdf	4.6 MB
TIO EXH C-33.pdf	125.6 KB
TIO EXH C-34.pdf	790.5 KB
TIO EXH C-4.pdf	566.6 KB
TIO EXH C-5.pdf	309.6 KB
TIO EXH C-6.pdf	525.9 KB
TIO EXH C-7.pdf	299.9 KB
TIO EXH C-8.pdf	36.4 KB
TIO EXH C-9.pdf	36.3 KB
TIO Exhibit List.pdf	188.1 KB
TIO Final Witness List and Written Testimonies.pdf	47.2 MB
TMT International Observatory, LLC's Pre-Hearing Statement; Exhibit 1; COS.pdf	3.6 MB

**Download
Attachments**

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Thank you

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

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From: Frances M. Soares
Sent: Tuesday, October 11, 2016 4:27 PM
To: michael.cain@hawaii.gov; dlrr.maunakea@hawaii.gov; isandison@carlsmith.com; RNWurdeman@RNWLaw.com; akulele@yahoo.com; uhiwai@live.com; kahookahi@gmail.com; kualii@hotmail.com; lsa@torkildson.com; njc@torkildson.com; leina.ala.s808@gmail.com; maelanilee@yahoo.com; lanny.sinkin@gmail.com; s.tabbada@hawaiiintel.net; tiffniekakalia@gmail.com; makakila@gmail.com; brannonk@hawaii.edu; hanahanai@hawaii.rr.com; pohaku7@yahoo.com; kekaukike@msn.com; 'tluikwan@carlsmith.com'; 'jpm@carlsmith.com'; 'lmcaneley@carlsmith.com'; 'ekflores@hawaiiintel.net'; 'kealiikea@yahoo.com'; 'keomaivg@gmail.com'; 'puacase@hawaiiintel.net'; 'bianca@kahea.org'; 'kahiwaL@cs.com'; 'cordylinicolor@gmail.com'
Cc: J. Douglas Ing; Denise H. Kameda; Summer H. Kaiawe; Ross T. Shinyama; Ellen A. Yamamoto; Charlene M. Moriwaki
Subject: BLNR Contested Case Hearing HA 16-002

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

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Ellen A. Yamamoto

From: ShareFile Notifications (No Reply) <noreply@sf-notifications.com>
Sent: Wednesday, October 12, 2016 1:15 AM
To: Ellen A. Yamamoto
Subject: Michael Cain has downloaded files from the folder 'File Box'



Ellen,

Michael Cain downloaded files from a "Send Files" link at 10/12/16 2:15A:

File Box

Name: TIO Final Witness List and Written Testimonies.pdf

f

Size: 47.16 MB • **Downloaded:** 10/12/16 2:14a

User: Michael Cain [michael.cain@hawaii.gov] (State of Hawaii DLNR)

Name: TMT International Observatory, LLC's Pre-Hearing

Statement; Exhibit 1; COS.pdf

Size: 3.64 MB • **Downloaded:** 10/12/16 2:14a

User: Michael Cain [michael.cain@hawaii.gov] (State of Hawaii DLNR)

Dates are displayed in UTC -10

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EXHIBIT 6

Ellen A. Yamamoto

From: Ross T. Shinyama
Sent: Thursday, October 13, 2016 5:35 PM
To: Lanny Sinkin; Michael Cain; Kealoha Pisciotta-Keomailani Von Gogh; Clarence Ching; Uncle Kalani Flores; Pua Case; Deborah J. Ward; Paul K. Neves; Bianca Isaki; Ian Sandison; Tim Lui-Kwan; John P. (Pete) Manaut; Lindsay N. McAneeley; J. Douglas Ing; Mehana Kihoi; Kahookahi Kanuha; Joseph Camara; Isa@torkildson.com Ashida; njc@torkildson.com Chu; leina'ala s; Maelani Lee; akulele@yahoo.com Kanaele; s.tabbada@hawaiiantel.net; tiffniekakalia Kakalia; Glen Kila; Brannon Kealoha; hanahanai@hawaii.rr.com Freitas; pohaku7@yahoo.com Freitas; Ivy McIntosh; Kealamakia Jr.; Patricia Ikeda; Yuklin Aluli; Dexter Kaiama
Cc: Ellen A. Yamamoto
Subject: RE: BLNR-CC-16-002 Temple of Lono Supplement to Motion to Strike
Attachments: TMT/BLNR Case No. BLNR-CC-16-002

Mr. Sinkin:

Per the attached email, Ellen Yamamoto of my office served you via email on October 11, 2016 at 4:56 pm with TIO's Prehearing Statement, Final Witness List and Written Testimonies, and Exhibit List and Exhibits C-1 through C-34. Ms. Yamamoto did not receive any bounce-back message indicating that her email did not go through to you. Consequently, your claims of not being timely served are incorrect. If you wish to have Ms. Yamamoto resend her October 11 email to you, please let me know.

Thank you,
Ross

Ross T. Shinyama, Esq.
Watanabe Ing LLP
Telephone: (808) 544-8300
Direct Line: (808) 544-8307

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!

-----Original Message-----

From: Lanny Sinkin [<mailto:lanny.sinkin@gmail.com>]
Sent: Thursday, October 13, 2016 5:15 PM
To: Michael Cain; Kealoha Pisciotta-Keomailani Von Gogh; Clarence Ching; Uncle Kalani Flores; Pua Case; Deborah J. Ward; Paul K. Neves; Bianca Isaki; Ian Sandison; Tim Lui-Kwan; John P. (Pete) Manaut; Lindsay N. McAneeley; Ross T. Shinyama; J. Douglas Ing; Mehana Kihoi; Kahookahi Kanuha; Joseph Camara; Isa@torkildson.com Ashida; njc@torkildson.com Chu; leina'ala s; Maelani Lee; Lanny Sinkin; akulele@yahoo.com Kanaele; s.tabbada@hawaiiantel.net; tiffniekakalia Kakalia; Glen Kila; Brannon Kealoha; hanahanai@hawaii.rr.com Freitas; pohaku7@yahoo.com Freitas; Ivy McIntosh; Kealamakia Jr.; Patricia Ikeda; Yuklin Aluli; Dexter Kaiama
Subject: BLNR-CC-16-002 Temple of Lono Supplement to Motion to Strike

Aloha,

Attached please find a copy of:

Temple of Lono Supplement to Motion to Strike.

Mahalo

Lanny Alan Sinkin

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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-16-002

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

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

Mehana Kihoi
PO Box 393
Honaunau, HI 96726
uhiwai@live.com

C. M. Kaho'okahi Kanuha
77-6504 Maile St
Kailua Kona, HI 96740
kahookahi@gmail.com

Carlsmith Ball LLP
Ian Sandison, Tim Lui-Kwan, John P.
Manaut, Lindsay N. McAneeley
1001 Bishop Street
ASB Tower, Suite 2200
Honolulu, HI 96813
isandison@carlsmith.com
tluikwan@carlsmith.com
jpm@carlsmith.com
lmcaneley@carlsmith.com
*Counsel for the Applicant University
of Hawai'i at Hilo*

Lanny Alan Sinkin
P. O. Box 944
Hilo, HI 96721
lanny.sinkin@gmail.com
*Representative for The Temple of
Lono*

Richard L DeLeon
140 Manino Cir Apt 101
Kihei, HI 96753
kekaukike@msn.com

Maelani Lee
PO Box 1054
Waianae, HI 96792
maelanilee@yahoo.com

Kalikolehua Kanaele
4 Spring Street
Hilo, HI 96720
akulele@yahoo.com

Torkildson, Katz, Moore,
Hetherington & Harris
Attn: Lincoln S. T. Ashida
120 Pauahi Street, Suite 312
Hilo, HI 96720-3084
lsa@torkildson.com
njc@torkildson.com
*Counsel for Perpetuating Unique
Educational Opportunities (PUEO)*

J. Leina'ala Sleightholm
P.O. Box 383035
Waikoloa, HI 96738
leina.ala.s808@gmail.com

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

Stephanie-Malia:Tabbada
P O Box 194,
Naalehu, HI 96772
s.tabbada@hawaiiantel.net

Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

Richard N. Wurdeman
Attorney at Law
1003 Bishop Street, Suite 720
Honolulu, HI 96813
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*

William Freitas
PO Box 4650
Kailua Kona, HI 96745
pohaku7@yahoo.com

Flores-Case 'Ohana
E. Kalani Flores
ekflores@hawaiiantel.net

Paul K. Neves
kealiikea@yahoo.com

Brannon Kamahana Kealoha
89-564 Mokiawe Street
Nanakuli, HI 96792
brannonk@hawaii.edu

Tiffnie Kakalia
549 E. Kahaopea St.
Hilo, HI 96720
tiffniekakalia@gmail.com

Kealoha Pisciotta and Mauna Kea
Anaina Hou
keomaivg@gmail.com

B. Pualani Case
puacase@hawaiiantel.net

Yuklin Aluli, Esq.
415-C Uluniu Street
Kailua, Hawaii 96734
yuklin@kailualaw.com
Co-Counsel for Petitioner
KAHEA: The Hawaiian
Environmental Alliance, a domestic
non-profit Corporation

Glen Kila
89-530 Mokiawe Street
Waianae, HI 96792
makakila@gmail.com

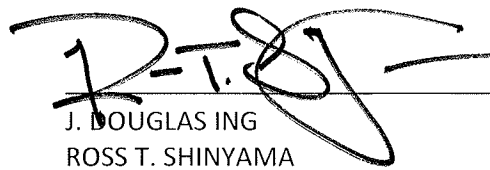
Cindy Freitas
PO Box 4650
Kailua Kona, HI 96745
hanahanai@hawaii.rr.com

Clarence Kukauakahi Ching
kahiwaL@cs.com

Deborah J. Ward
cordylinecolor@gmail.com

Dexter K. Kaiama, Esq.
111 Hekili Street, #A1607
Kailua, Hawaii 96734
cdexk@hotmail.com
Co-Counsel for Petitioner
KAHEA: The Hawaiian
Environmental Alliance, a domestic
non-profit Corporation

DATED: Honolulu, Hawaii, October 14, 2016



J. DOUGLAS ING
ROSS T. SHINYAMA
SUMMER H. KAIawe

Attorneys for TMT International Observatory LLC