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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) **EXHIBITS 1 AN 2 TO**  
District Use Permit (CDUP) (HA-3568 for ) **TEMPLE OF LONO MOTION TO**  
) **DISMISS TIO AS INTERVENOR OR,**  
) **ALTERNATIVELY, STAY THIS**  
) **PROCEEDING ; MEMORANDUM**  
The Thirty Meter Telescope at the Mauna ) **IN SUPPORT, EXHIBITS 1 AND 2; COS**  
Kea Science Reserve, Kaohe Mauka, )  
Hamakua District, Island of Hawai'i, )  
TMK (3) 4-4-015:009 )  
\_\_\_\_\_)

**TEMPLE OF LONO EXHIBITS 1 AND 2 MOTION TO DISMISS TIO AS AN  
INTERVENOR OR, ALTERNATIVELY, STAY THIS PROCEEDING**

On Thursday, December 15, 2016, the Temple of Lono filed its Motion to Dismiss TIO as Intervenor or, Alternatively, Stay This Proceeding.

The Temple inadvertently failed to include the two exhibits referenced in that motion.

Attached hereto are Exhibits 1 and 2.

DATED: December 16, 2016

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



## **Judge overturns BLNR's approval of TMT sublease**

Published December 15, 2016 - 3:05pm

By TOM CALLIS Hawaii Tribune-Herald

In another major setback for the Thirty Meter Telescope, a Hilo Circuit Court judge today invalidated the state's approval of the project's sublease for Mauna Kea, attorneys for the plaintiff announced.

Judge Greg Nakamura ruled the state Board of Land and Natural Resources violated the constitutional rights of E. Kalani Flores by not holding a hearing when it consented to the agreement between the University of Hawaii at TMT International Observatory in 2014, according to the Native Hawaiian Legal Corp.

A written ruling wasn't immediately available so the full impact of the decision isn't clear.

David Kopper, attorney for plaintiff E. Kalani Flores, said he believed the ruling would require the Land Board to go through a separate contested case hearing if it wants to renew its consent.

"They (UH and TIO) can do whatever they want but it's not legally enforceable unless you have this consent from the board," he told the Tribune-Herald. "There is no consent at this time."

Officials with UH, the state attorney general's office and TIO weren't immediately available for comment.

Previously in the case, Nakamura had remanded the sublease to the Land Board for additional review. That occurred last March but it doesn't appear the state took additional action.

"To me it confirms that Native Hawaiian cultural practices have a right to be involved in these agency decisions," Kopper said of the ruling. "And their interests are no less important than other commercial interests."

In a press release, Flores said: "Judge Nakamura's ruling reaffirms our position that the BLNR's actions have failed to protect Native Hawaiian rights and the public's interest in these public lands on Mauna a Wakea."

This is the second time a court has found the state erred in approving the \$1.4 billion project, opposed by some Native Hawaiians who say it will desecrate sacred land.

A year ago, the state Supreme Court also ruled that opponents' rights were violated by the Land Board voting in favor of a conservation district land use permit before a contested case, which is a quasi-judicial hearing, was held in 2011.

That resulted in a second hearing being held for the permit, which has been ongoing since October and is scheduled through January.

A TIO board member said last month that the organization intends to resume construction either on Mauna Kea or the Canary Islands, its alternate site, in April 2018.

The telescope organization's partners are Caltech, University of California, Association of Canadian Universities for Research in Astronomy and national institutes in Japan, China and India.

Email Tom Callis at [tcallis@hawaiitribune-herald.com](mailto:tcallis@hawaiitribune-herald.com).



## Court Invalidates Thirty Meter Telescope Sublease



by Big Island Video News  
on Dec 15, 2016 at 1:13 pm

**HILO, Hawaii** – The state’s approval of a sublease between the University of Hawai’i and the Thirty Meter Telescope has been thrown out in court. (*UPDATE: Edited for clarity, added “state’s approval” to first sentence.*)

**UPDATE:** While TMT opponents rejoiced, saying the decision amounts to an invalidation of the land board’s approval of the sublease, the University of Hawaii is being cautious in its interpretation of the ruling. “The University of Hawai’i has a valid sublease with TMT that it is subject to BLNR consent,” the university said in a statement. “The consent had been obtained. Today, the judge ruled on the consent of the sublease and not the sublease itself. We will receive further clarification when the written order is released.”

**UPDATE:** A TMT spokesperson said the observatory is also waiting for the written order before determining its next step or how the ruling will effect the TMT timeline.

Opponents of the billion dollar observatory planned for the summit of Mauna Kea celebrated the circuit court ruling made in Hilo today, posting the news to Facebook.

<http://www.bigislandvideonews.com/2016/12/15/court-invalidates-thirty-meter-telescope-sublease/>

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TMK (3) 4-4-015:009 )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the **TEMPLE OF LONO EXHIBITS 1 AND 2 TO MOTION TO DISMISS TIO AS AN INTERVENOR OR, ALTERNATIVELY, STAY THIS PROCEEDING** was served on the following parties by email on December 16, 2016:

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

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and will be served by first class mail or hand delivery on December 16, 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: December 16, 2016

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