

Lanny Alan Sinkin
P. O. Box 944
Hilo, Hawai'i 96721-0944
(808) 936-4428
Lay representative for
Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

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| IN THE MATTER OF |) | Case No. HA-22-02 |
| |) | |
| |) | |
| THE PETITION OF MAUNA KEA HUI FOR |) | TEMPLE OF LONO |
| DECLARATORY ORDER FILED) |) | FINDINGS OF FACT AND |
| MAY 24, 2021 |) | CONCLUSIONS OF LAW |
| |) | |
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TEMPLE OF LONO
FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Perpetuating Unique Educational Opportunities (PUEO) filed a joinder in this proceeding that seeks to blame the failure of the TMT project to initiate construction within the time required by the CDUP on those who opposed the project. Minute Order 3, Exhibit G.
2. Prior to the decision to site the TMT on Mauna Kea, proponents of the project commissioned a risk assessment by the Keystone Center. CDUA proceeding; Tr. Page 138 – 156 pdf.
3. The result was a report titled “Assessment of the Risks for Siting the Thirty Meter Telescope on Mauna Kea.” Id.
4. That independent risk assessment predicted significant opposition to the project based on the negative history of astronomy on the Mauna. Id.
5. There was a foreseeable risk that the project would face serious opposition. Id.

Received
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
Dec 11, 2023

6. The report found:

- A. A Sour History and Heavy Baggage. Unfailingly, almost every interviewee we spoke with, even those who are great proponents of placing observatories on Mauna Kea, acknowledge a complex and, for many, a bad history on the mountain. Hawaiians, both Native and non- Native, speak of poor planning, bureaucratic bumbling, broken promises, technocratic arrogance, and a persistent failure to engage the Native Hawaiian community in meaningful and appropriate ways. Some of this has been reported in two legislative audits. While there are many fine individual efforts underway to rectify long-running problems, the situation remains contentious and confusing.
- B. The report continued: **Should TMT decide to pursue a Mauna Kea site, it will inherit the anger, fear, and great mistrust generated through previous telescope planning and siting failures and an accumulated disbelief that any additional projects, especially a physically imposing one like the TMT, can be done properly.** One interviewee said of future development, “It can be less objectionable, but it can’t be alright.”

Ibid. at 3-4 (emphasis added)

7. Despite these clear warnings, TMT proponents decided to select Mauna Kea as the site for the TMT.

8. The predicted public opposition emerged with thousands of people participating. See <https://www.npr.org/2022/07/31/1114314076/hawaii-mauna-kea-telescope-space-observatory>; <https://hilo.hawaii.edu/news/kekalahea/maunakea>

9. The Governor closed the access road to the summit. <https://www.hawaiinewsnow.com/2019/07/18/read-governors-emergency-proclamation-following-tmt-protest-arrests/>

10. In the six years since the uprising, the TMT project has made no effort to engage in construction of the TMT.

11. Despite the risks and all the barriers to completing the project, the project refuses to post a bond to cover any possible default at the construction or decommissioning phases of the project.
12. The critical flaw in the PUEO argument is the absence of an acknowledgement that the project knowingly assumed the risk that an outpouring of opposition would frustrate efforts to build the telescope.
13. The proponents would like to pretend that history began when the uprising occurred, leaving out the decades of history that preceded the uprising and laid the groundwork for the uprising.
14. The Canadian Astronomical Society (CASCA) has now taken a position that they will no longer support the TMT project, if the project is not approved by the indigenous people. <https://kanaeokana.net/noconsent> (“Unless the TMT project has consent from the Native Hawaiians, Canada’s astronomical community cannot support its construction on Maunakea.”)
15. Even if Canada remains a partner, the project lacks the funding to complete construction and decommissioning.

CONCLUSIONS OF LAW

16. In the absence of a bond, the project has shifted the risk to the public.
17. The responsibility for causing the TMT project’s failure to proceed rests squarely on those who made the decision to place the telescope on Mauna Kea.
18. As to whether TIO initiated construction in a timely manner, the Hawaii Tribune-Herald on Friday, November 3, 2023 reported TMT Project Manager Fengchaun Liu as saying that the telescope is nowhere near to actually being built on the mountain.
19. Mr. Liu reported the project as awaiting several “necessary steps” from the federal government before any construction can move forward. Mr. Liu said that there is no imminent start to construction.

20. In the same article, Mr. Liu echoed the Keystone Report many years later, by apologizing “for contributing to divisions in the community” and added that he understands that the TMT represents to many Native Hawaiians a “symbol of colonialism.”

21. Mr. Liu acknowledged that the project “has not endeared itself to many on the island and has provoked two largescale protests and demonstrations on Mauna Kea.”

CONCLUSION

22. The Keystone Report accurately foresaw what would happen, if Mauna Kea was selected as the site for the Thirty Meter Telescope.

23. The proponents of the project chose to accept that risk.

24. The proponents should gracefully accept that they gambled and lost.

Dated: December 10, 2023
Kurtistown, Hawai'i

_____/s/_____
Lanny Alan Sinkin
Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES STATE OF HAWAII

IN THE MATTER OF Case No. HA-22-02

The Petition of Mauna Kea Hui for a Declaratory Order Filed May 24, 2021.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the following documents: Finding of Fact, Conclusions of Law, of Lanny Sinkin, representing Temple of Lono,

Was duly served on the following parties (via email) on December 10, 2023

Julie China
Deputy Attorneys General
julie.h.china@hawaii.gov
Attorneys for the Board of Land and Natural Resources

Jesse K. Souki
Associate General Counsel
University of Hawai'i
souki@hawaii.edu
Attorney for University of Hawai'i, Hilo

Lincoln S.T. Ashida Newton J. Chu
Torkildson, Katz, Moore, & Harris
lsa@torkildson.com
njc@torkildson.com
Attorneys for Perpetuating Unique Educational Opportunities (PUEO)

Richard Naiwieha Wurdeman
RNWurdeman@RNWLAW

Bianca Isaki bianca.isaki@gmail.com
Attorneys for the Mauna Kea Hui

Michael Cain
michael.cain@hawaii.gov

Custodian of Records
Board of Land and Natural Resources

J. Douglas Ing
Brian A. Kang
Ross Shinyama Summer H. Kaiawe Watanabe Ing LLP
douging@wik.com
bkang@wik.com
rshinyama@wik.com

skaiawe@wik.com
Attorneys for TMT International Observatory, LLC

Cindy Freitas
makanainanqi@gmail.com

Flores-Case 'O'ana
08ef80@gmail.com

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

Dated: Hilo, Hawaii

December 10, 2023

Signed :

_____/s/_____

Lanny Alan Sinkin

Representing The Temple of Lono

