



Native Hawaiian LEGAL CORPORATION

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TMT LOSES SUB-LEASE FOR MAUNA KEA

A circuit court judge today invalidated a 2014 Board of Land & Natural Resources (BLNR) decision approving a sublease between the University of Hawai'i and the developer of the TMT telescope on Mauna Kea.

"Today, Mr. Kalani Flores and the Native Hawaiian Legal Corporation (NHLC) received a key ruling in the on-going struggle over the fate of Mauna Kea," said NHLC attorney David Kauila Kopper.

Circuit Court Judge Greg Nakamura ruled that the BLNR violated the constitutional rights of E. Kalani Flores by failing to hold a hearing before allowing the University of Hawai'i to issue a sublease to TMT International Observatory, LLC.

"Our client brought this lawsuit because it became apparent that the BLNR was still hanging on to its initial decision to give the greenlight to the TMT despite the Hawai'i Supreme Court's decision warning the BLNR about not 'pre-judging' the issue", Kopper said.

Mr. Flores expressed his sincere gratitude to the court for its ruling: "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 of Mauna a Wākea."

Mr. Flores requested a hearing on this matter in 2014, before the Board gave its consent to the sublease. His request was denied. The University of Hawai'i's 1967 lease of 11,288 acres of land on Mauna Kea requires the Board's consent for it to sublease land to others including TMT.

He then appealed the BLNR's decision to the Circuit Court. His appeal was pending when the Hawai'i Supreme Court issued its decision in *Mauna Kea Anaina Hou* holding that the Board's vote to approve the TMT's permit prior to holding a hearing violated the constitutional rights of Native Hawaiians.

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Nolo. Upright, straight, stately, tall and straight as a tree without branches; sharply peaked, as mountains. Fig., righteous, correct.

Following the Supreme Court's ruling, Judge Nakamura sent Flores' case back to the BLNR to answer specific questions about how the Supreme Court's decision impacted the board's approval of the sublease. The BLNR did not respond.

"The Court's decision vindicates the rights of Native Hawaiians to be involved in government decisions that directly impact their rights. Under the law, these rights are no less important than the rights of property owners to be heard on actions that affect their lands", Attorney Kopper said.

In his ruling, Judge Nakamura said he had given the Board the opportunity to make its own decision on the matter. He cited to Section 4 of the concurring opinion in *Mauna Kea Anaina Hou*, which outlines the Board's constitutional responsibilities to affirmatively protect the rights of Native Hawaiians. The court's ruling was the final step in reconfirming the process which must be followed when the Board considers whether the TMT should be built atop Mauna Kea.

"With a sublease in place throughout the hearing on the conservation district use application, again the Board's approval of the permit would be a foregone conclusion. Judge Nakamura's decision follows the Supreme Court's clear message to government agencies that they cannot act as 'a passive actor or a neutral umpire' when it comes to decisions that implicate the constitutional rights of Native Hawaiians to exercise traditional and customary practices. They must take affirmative steps to ensure a process that safeguards Native Hawaiian rights and effectuates the values of the public trust, " Kopper said

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