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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)
District Use Permit (CDUP) (HA-3568 for) **TEMPLE OF LONO MOTION TO**
The Thirty Meter Telescope at the Mauna) **DISMISS FOR LACK OF JURISDICTION**
Kea Science Reserve, Kaohe Mauka,) **BASED ON UNRESOLVED LAND**
Hamakua District, Island of Hawai'i,) **CLAIMS; MEMORANDUM IN**
) **SUPPORT; EXHIBIT 1; COS**
TMK (3) 4-4-015:009)
_____)

**TEMPLE OF LONO MOTION TO DISMISS FOR LACK OF JURISDICTION
BASED ON UNRESOLVED LAND CLAIMS**

Now comes the Temple of Lono, pursuant to Hawaii Administrative Rules (HAR) §13-1-34, and moves the Hearing Officer to dismiss this proceeding based on the Board of Land and Natural Resources lacking jurisdiction to address the permit application at issue because the Applicant for the permit does not have clear title to the land for which the permitted use is intended.

In support of this Motion to Dismiss, the Temple of Lono files its Memorandum in Support of Motion to Dismiss for Lack of Jurisdiction.

Dated: July 22, 2016

Respectfully Submitted,

_____/s/_____
Lanny Alan Sinkin
Lay Representative
Temple of Lono

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The Thirty Meter Telescope at the Mauna) **SUPPORT OF MOTION TO DISMISS**
Kea Science Reserve, Kaohe Mauka,) **FOR LACK OF JURISDICTION**
Hamakua District, Island of Hawai'i,) **BASED ON UNRESOLVED LAND**
TMK (3) 4-4-015:009) **CLAIMS**
_____)

**TEMPLE OF LONO MEMORANDUM IN SUPPORT OF MOTION TO
DISMISS FOR LACK OF JURISDICTION BASED ON UNRESOLVED LAND CLAIMS**

I. INTRODUCTION

The Temple of Lono is an intervenor in this proceeding. Minute Order No. 13 at 4.

As a party to this proceeding, the Temple has an obligation to bring to the attention of the Hearing Officer any circumstances that arise which divest the Board of Land and Natural Resources of jurisdiction over this proceeding.

Such circumstances have now arisen.

On June 22, 2016, the Kingdom of Hawai'i filed its Kingdom of Hawai'i Notice of Absence of Necessary and Indispensible Parties (Hereinafter "Notice"). DOC-79. That document is incorporated by reference into this pleading.

The Notice took the following positions:

- The Kingdom¹ still exists.
- The Kingdom has an unresolved claim to the land at issue in this proceeding.
- The resolution of the contested claims to the land is a necessary prerequisite to deciding whether the CDUA sought in this proceeding should be granted or denied.
- The Kingdom is not represented in this proceeding, so its interest in the land is not being protected.
- The Kingdom is sovereign and not subject to the jurisdiction of the Board, unless the Kingdom voluntarily waives its sovereign immunity and agrees to the Board's jurisdiction.
- The Kingdom is not waiving its sovereign immunity, so the Board cannot exercise jurisdiction over the Kingdom nor compel the Kingdom's participation in this proceeding.
- As a party with an unresolved claim to the land in question, the Kingdom is a necessary and indispensable party in this proceeding.
- In the absence of the Kingdom and given the inability of the Board to exercise jurisdiction over the Kingdom, the land claims controversy cannot be resolved.
- The absence of a necessary and indispensable party to this proceeding requires this proceeding be dismissed on jurisdictional grounds. *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990).

¹ In this pleading, the term "Kingdom" will apply to the King and the Kingdom Government.

While the Notice provided the Hearing Officer with sufficient facts and argument to warrant the Hearing Officer *sua sponte* taking up the question of the Board's jurisdiction, to date the Hearing Officer has declined to do so.

Given that the parties to this proceeding are already spending time and resources preparing for a hearing that will not take place, if the issue of unresolved land claims cannot be resolved, the Temple is bringing this matter of jurisdictional insufficiency to the attention of the Hearing Officer through the motion to dismiss supported herein.²

² The Temple is the appropriate party to raise the jurisdictional question because the issue is land. The sacred land base of the Temple is part of the lands the Kingdom seeks to recover. The Temple brought the nature of the relationship between the faith and the Kingdom into the light years ago.
http://kingdomofhawaii.info/wp-content/uploads/2015/01/kingdomofhawaii.info_docs_Temple-of-Lono-Letter-to-U.S.-Supreme-Court.pdf

As the Temple stated seven years ago to the United States Supreme Court:

The missionaries convinced the Hawaiian Christians to pass laws making illegal many of the religious, social, and cultural practices at the heart of the Hawaiian civilization. Ancestral worship, the hanai system in which children were often given from one family to another to be raised, and other key elements of the religious and social structure were forbidden. The hula was outlawed. Speaking Hawaiian was forbidden in the schools. This systematic suppression of the Hawaiian civilization continues today with developments being built on burial sites, destruction of sacred sites, desecration of the 'aina (the land), and other acts of deliberate disrespect directed at the vestiges of Hawaiian civilization.

...

This case brings that genocide to its pinnacle. Taking away the lands of Hawai'i and giving them to the State of Hawaii will destroy the physical foundation of the Hawaiian civilization and break the religious tie of the people to the 'aina. The maintenance of that connection is the essential kuleana of the Temple of Lono and the essence of the Temple of Lono religious practice.

Ibid. at 10.

II. ARGUMENT

A. There are competing, unresolved claims to the land at issue in this proceeding.

There is no question that the President of the United States at the time of the overthrow of the Kingdom Government viewed the overthrow as an unjustified act of war against a friendly nation by United States military forces. Notice at 2-4.

One hundred years later, the United States Congress passed and President William Jefferson Clinton signed a resolution formally apologizing to the Kingdom and native Hawaiians for the United States role in that illegal action. Public Law 103-150, 107 Stat. 1510 (1993).

That resolution included the following clause:

Whereas, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum

Id. (emphasis added).

The Apology Resolution also stated:

SEC. 3. DISCLAIMER.

Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.

Id.

Among the claims against the United States by the Kingdom that are unresolved, the Kingdom's claims to its national lands are paramount.

Recently, the United States Department of Interior recognized that the reestablishment of some form of relationship between the United States

Government and a Hawaiian government would be appropriate. 80 Federal Register 59113 (October 1, 2015.)

As part of creating that Hawaiian government, what were previously Kingdom lands could be transferred to the new government. *Ibid.* at 59117 (“efforts resulting in the creation and future transfer of the Kahoolawe Island reserve to the ‘sovereign native Hawaiian entity’”)

The transfer of lands, once belonging to the Kingdom and later seized for use by the United States military, back to a Hawaiian government is an example of the type of transition the Kingdom seeks for the entire Archipelago and illuminates the issue of unresolved land claims.

More recently, a resolution just issued by the Kingdom reiterates that the restored Kingdom claims the Crown and Government Lands stolen by the United States. Exhibit 1. Such reclamation includes the land at issue in this proceeding.³

The State of Hawai’i and the University of Hawai’i claim that the lands belong to them and that they can lease them out for whatever purposes their laws allow.

The Kingdom claims those same lands and denies the right of the State or University to lease out the lands without Kingdom permission.

These competing claims remain unresolved.

B. “Annexation “ did not dissolve the Kingdom’s claims to its national lands.

The Apology Resolution clause quoted above obliquely acknowledges that annexation never legally took place.

³ While the Notice identifies the lands at issue as Crown lands, apparently those lands were Kingdom Government lands. The Kingdom is reclaiming both.

Whereas, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum

Both the Provisional Government and the Republic of Hawai'i tried to negotiate an annexation treaty with the United States.

The Provisional Government was the illegitimate creation of the traitors, who illegally seized the Queen with the backing of the United States Minister to Hawai'i and the United States Marines, and, therefore, had no authority to alienate the lands of the Kingdom. As the United States Congress found:

Whereas, in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators, described such acts as an "act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress", and acknowledged that by such acts the government of a peaceful and friendly people was overthrown

The Apology Resolution, supra.

The successor Republic of Hawai'i was equally illegitimate. As the United States Congress found:

Whereas, the Republic of Hawaii also ceded 1,800,000 acres [7,280 km] of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;

Ibid.

The United States Senate did not ratify either of the treaties that attempted to annex the Kingdom.

Having failed to achieve an agreement between the two nations, the United States Congress then proceeded to act unilaterally by the adoption of the so-called Newlands Resolution supposedly annexing the Kingdom. Joint Resolution to

Provide for Annexing the Hawaiian Islands to the United States, 30 Stat. 750 (1898); Act of Apr. 30, 1900, 31 Stat. 141.

The idea that one nation can unilaterally change the status of another nation, dissolving the other nation's independence and seizing the other nation's national lands by merely passing a resolution, is ludicrous. The Newlands Resolution could not achieve annexation any more than a resolution passed by the Parliament of France could annex Brazil, without Brazil formally and legally agreeing.

That the Apology Resolution acknowledged that no such alienation of the Kingdom lands took place either through the "monarchy or through a plebiscite or referendum" confirms that no such agreement took place.⁴

Having failed to achieve ratification of a treaty of annexation, there is no legitimate law or other action taken by either the United States or the Kingdom that dissolved the Kingdom's claims to its own national lands.

C. The Board cannot resolve the contested land claims.

Exhibit 1 demonstrates why the Board cannot resolve the contested land claims. Faced with Exhibit 1, the Board has two choices: (1) deny the legitimacy of the Kingdom action restoring the Kingdom's exclusive jurisdiction over the Archipelago and find that the Kingdom has no competing claim to the lands or (2) acknowledge the Kingdom action as legitimate and the presence of a competing Kingdom claim to the land.

For the Board to decide the legitimacy of the Kingdom claim, the Board

⁴ If the "annexation" resolution was legally ineffective, Hawai'i was never a territory of the United States and the subsequent statehood plebiscite and Admission Act, Act of March 18, 1959, Pub L 86-3, 73 Stat 4, were equally ineffective.

would have to have jurisdiction over the Kingdom. As the Kingdom is a sovereign, the King would have to waive sovereign immunity in order for the Board to have jurisdiction. As the King has not waived sovereign immunity, the Board lacks jurisdiction to resolve the status of the Kingdom land claims. These circumstances require dismissal of this proceeding for lack of jurisdiction over all necessary parties. *Makah, supra.*

Even were the King to waive sovereign immunity and agree to participate in this proceeding as a party, the Board could not accept that waiver. To do so would be to tacitly extend United States diplomatic recognition to the Kingdom, which determination is a political question over which the Board lacks jurisdiction.

For the Board to acknowledge the Kingdom's claim as legitimate would similarly require the Board to recognize the Kingdom Government. Again, such recognition is beyond the scope of the Board's authority.

Unable to deny or affirm the legitimacy of the Kingdom's claim to the land at issue, either because the Kingdom is sovereign or because the Board lacks the authority to recognize the Kingdom, the Board cannot proceed to authorize a private, non-profit, foreign corporation to receive a permit for major construction on that land.

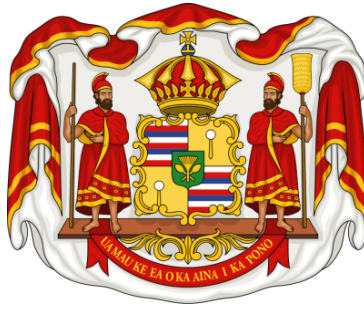
For the above and foregoing reasons, this proceeding must be dismissed.

Dated: July 22, 2016, Kurtistown, Kingdom of Hawai'i

Respectfully submitted,

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

EXHIBIT 1



TO THE NATIONS OF THE WORLD FROM THE KINGDOM OF HAWAI'I

RESOLUTION

Hō'ili'ili Nani – The Gathering of Beautiful Things or, Restoring What was Taken

Whereas the Hawaiian Archipelago is the spiritual and physical home of the Spirit of Aloha, embodied in the Hawaiian population of the Archipelago; and

Whereas the Hawaiian Archipelago is the ancestral home of the Hawaiian people;
and

Whereas the Hawaiian people welcomed foreigners to join the Hawaiian civilization;
and

Whereas the Hawaiian people adopted practices of the foreigners, such as transitioning from a traditional governing structure composed of the kuleana of Kahuna, Ali'i, and Maka'āinana to a constitutional monarchy form of government;
and

Whereas that constitutional monarchy had treaties with seventeen nations, including the United States, recognizing the Kingdom as a sovereign government;
and

Whereas the Kingdom was included within the Universal Postal Union; and

Whereas some among those foreigners lusted after the physical resources and labor that the Hawaiian people could provide; and

Whereas those same foreigners sought to destroy the Hawaiian civilization altogether through suppression of the traditional faith, outlawing spiritual practices, banning cultural practices, displacing Hawaiians from their own lands, banning the Hawaiian language from the schools, and otherwise conducting a campaign of genocide, see United Nations Convention on the Prevention and Punishment of the

Crime of Genocide, adopted by Resolution 263 (III) A of the United Nations General Assembly on December 9, 1948; and

Whereas the ultimate goal of this campaign of genocide was the annexation of the Kingdom of Hawaii into the United States; and

Whereas the United States Minister to the Kingdom conspired with traitorous foreign land holders, businessmen, missionaries and others to seize Queen Liliu'okalani and set in motion such an annexation; and

Whereas a Committee of Safety, composed of fifteen traitors, set in motion the overthrow of the Kingdom Government; and

Whereas the United States Minister to the Kingdom landed United States Marines with Gatling guns and cannon to support the traitors; and

Whereas the United States Minister immediately recognized the illegal Provisional Government formed by the traitors; and

Whereas the traitors coerced the Queen into abdicating her throne by threatening harm to the Queen and her subjects; and

Whereas the Queen called upon the United States Government to restore her to her throne; and

Whereas the United States President acknowledged that the participation of the United States Minister and United States armed forces was an act of war in violation of the treaty of peace between the Kingdom and the United States; and

Whereas the United States President sent a message to the traitors telling them to restore the Queen and the legitimate government, and

Whereas the traitors refused to restore the legitimate government, and

Whereas the United States failed to take the actions necessary to restore the legitimate Kingdom Government; and

Whereas all United States attempts at annexation through treaty failed to receive the constitutionally-required support from the United States Senate; and

Whereas substituting the so-called Newlands Resolution passed in 1898 for a ratified treaty was legally ineffective, such that annexation never took place; and

Whereas the United Nations General Assembly placed Hawai'i on the United Nations list of Non-Self-Governing Territories in 1946; and

Whereas the United States conducted a so-called statehood referendum in 1959 in a manner that violated international law by omitting independence as an option; and

Whereas the United States requested the United Nations remove Hawai'i from the list of Non-Self-Governing Territories claiming Hawai'i had become a state based on the illegal statehood referendum; and

Whereas the United Nations accepted the United States request to remove Hawai'i from the list despite the illegal nature of the statehood referendum; and

Whereas the United States Government recognized the role the United States played in the illegal overthrow of the Kingdom Government in a resolution passed by the United States Congress, Public Law 103-150, and signed by President Clinton in 1993; and

Whereas lawfully the Kingdom never ceased to exist; and

Whereas the Kingdom Government was restored through the creation of a government through the traditional method of convening Kupuna; and

Whereas the Kingdom Government issued a Proclamation announcing the formation of the Government, adopted the 1837 Constitution of the Kingdom, and selected as Ali'i Nui Mō'i (High Chief/King) Edmund Keli'i Nalikolauokalani Silva, Jr., whose lineage traces back to Queen Liliu'okalani, King Kamehameha I, and Kamehameha nui 'Ai Lu'au; and

Whereas the King issued a Declaration of Independence reclaiming the Kingdom's right to sovereignty; and

Whereas the King has put into place all necessary officials to conduct governance; and

Whereas the Kingdom Government has performed acts of governance documented on the Kingdom website at www.KingdomofHawaii.info; and

Whereas such acts of governance are sufficient to satisfy international requirements for a government to be recognized, as set forth in the Montevideo Treaty; and

Whereas the Kingdom Government continues its restoration process; and

Whereas a key element in that restoration is the return of all lands seized by foreign powers through aiding and abetting treason, enacting a legally ineffective resolution pretending to annex the Kingdom, conducting an alleged statehood referendum that violated international law, and otherwise acting illegally to steal the lands of the Kingdom; and

Whereas the Kingdom desires to reestablish its full sovereignty through a peaceful transition back to the governing structure that existed prior to the illegal acts noted above with the subjects of the restored Kingdom then free to adopt whatever form of government best suits the goal of reestablishing a self-sufficient, self-reliant, non-aligned nation, preserving and enhancing the traditional Hawaiian civilization, adopting modern practices not inconsistent with the traditional civilization, and otherwise restoring nationhood to the Hawaiian Archipelago;

Now, Therefore Be It Resolved, that the Kingdom of Hawai'i reclaims all lands belonging to the Kingdom prior to 1893; and

Be It Further Resolved that all currently unused lands that once belonged to the Kingdom will be made available to the people to raise healthy food, restore endangered species, gather materials necessary for cultural and spiritual purposes, establish/reestablish sacred sites, and otherwise reconnect the people with the 'Aina and each other in the Spirit of Aloha; and

Be It Further Resolved that the Kingdom hereby demands that all revenues currently flowing to the foreign governmental entities from Kingdom lands be delivered henceforth to the Kingdom; and

Be It Further Resolved that the Kingdom considers the United States and its subdivisions, such as the State of Hawai'i, to owe reparations to the Kingdom for all funds derived from Kingdom lands and other Kingdom resources, misappropriated by the such governments, plus a suitable interest on those funds; and

Be it Further Resolved that all nations having treaties with the Hawaiian Kingdom and their contemporary freed colonies or subdivisions, who are subject to obligations to these treaties of friendship, work to support justice in the Pacific; and

Be It Further Resolved that the Kingdom calls upon all foreign nations, particularly those nations having treaties with the Kingdom prior to the above-noted illegal internal acts of treason and external act of war, for support, solidarity, and recognition.

Resolved this 22 day of 2016.

_____/s/_____
Edmund Keli'i Silva Jr.
Ali'i Nui Mōi (High Chief/King)

_____/s/_____
Edmund Keli'i Silva, Sr.
Direct Descendent to King Kamehameha Ai Lu'au
Congress - Na Kupuna Council O Hawai'i Nei
Royal House of Nobles

_____/s/_____
Princess Ella Ayhing Kalauokalani Abe-Silva
Royal Genealogist

_____/s/_____
Princess Chystal Opu'uokalani Naki-Silva
Royal Historian

_____/s/_____
Kahuna Palani Tamehameha Kamehaloha Anuumealani Nobriga
Temple of Lono

_____/s/_____
Jennifer Pawlowski
Chief Justice
Kingdom Supreme Court

_____/s/_____
Lanny Alan Sinkin
Ali'i Mana'o Nui (Chief Advocate)

_____/s/_____
Mikahala Roy
First Citizen

_____/s/_____
Kai Landow
Minister of Foreign Relations

_____/s/_____
Terra 'Aina Blackford
Coordinator of Program Development

_____/s/_____
Bradley L. Duell, Ph.D (Kauilapele)
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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 Motion to Dismiss for Lack of Jurisdiction Based on Unresolved Land Claims; Memorandum in Support, Exhibit 1 was served on the following parties by eMail:

"Judge Riki May Amano (Ret.)" <rma3cc@yahoo.com>, "Julie China Deputy Attorney General Land and Transportation Division" <julie.h.china@hawaii.gov>, "Michael Cain" <michael.cain@hawaii.gov>, "Ian Sandison" <isandison@carlsmith.com>, "Richard N. Wurdeman" <RNWurdeman@RNWLaw.com>, "Watanabe Ing LLP" <rshinyama@wik.com>, "Harry Fergerstrom" <hankhawaiian@yahoo.com>, "Richard L DeLeon" <kekaukike@msn.com>, "Mehana Kihoi" <uhiwai@live.com>, "C. M. Kaho'okahi Kanuha" <kahookahi@gmail.com>, "Joseph Kualii Lindsey Camara" <kualiic@hotmail.com>, "Lincoln S. T. Ashida" <lsa@torkildson.com>, "Jennifer Leina'ala Sleightholm" <leina.ala.s808@gmail.com>, "Maelani Lee" <maelanilee@yahoo.com>, "Lanny Alan Sinkin" <lanny.sinkin@gmail.com>, "Kalikolehua Kanaele" <akulele@yahoo.com>, "Stephanie-Malia:Tabbada" <s.tabbada@hawaiiantel.net>, "Tiffnie Kakalia" <tiffniekakalia@gmail.com>, "Glen Kila" <makakila@gmail.com>, "Brannon Kamahana Kealoha" <brannonk@hawaii.edu>, "Cindy Freitas" <hanahanai@hawaii.rr.com>, "William Freitas" <pohaku7@yahoo.com>

Dated: July 22, 2016

_____/s/_____
Lanny Alan Sinkin

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I hereby certify that on this day a copy of the Temple of Lono Motion to Dismiss for Lack of Jurisdiction Based on Unresolved Land Claims; Memorandum in Support, Exhibit 1 was served on the following parties by first class mail:

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Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

Dated: July 23, 2016

_____/s/_____
Lanny Alan Sinkin