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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 RESPONSE TO TMT**
The Thirty Meter Telescope at the Mauna) **INTERNATIONAL OBSERVATORY,**
Kea Science Reserve, Kaohe Mauka,) **LLC'S RESPONSE TO THE**
Hamakua District, Island of Hawai'i,) **PURPORTED KINGDOM OF**
TMK (3) 4-4-015:00) **HAWAI'I'S NOTICE OF ABSENCE OF**
) **NECESSARY AND INDISPENSIBLE**
) **PARTIES [DOC-79]; CERTIFICATE OF**
) **SERVICE**
_____)

**TEMPLE OF LONO RESPONSE TO TMT INTERNATIONAL OBSERVATORY, LLC'S
RESPONSE TO THE PURPORTED KINGDOM OF HAWAI'I'S NOTICE OF ABSENCE
OF NECESSARY AND INDISPENSIBLE PARTIES [DOC-79]**

I. INTRODUCTION

The Kingdom of Hawai'i filed its Notice of Absence of Necessary and Indispensible Parties, DOC-79 (hereinafter "Notice"), to provide the Hearing Officer with information relevant to her jurisdiction, or lack thereof.

The Kingdom did not seek any action from the Hearing Officer or otherwise appear in this proceeding or in any way place the Kingdom under the jurisdiction of the Hearing Officer.

Nor did the Kingdom's representative filing the Notice seek admission to practice before the agency conducting the contested case referenced above. The

Kingdom's representative acted under the direction of the King to bring the information in the Notice to the attention of the Hearing Officer. Exhibit 1.

TMT decided to respond to the Notice. DOC-151.

The Temple of Lono, a party to this proceeding, did incorporate the Notice in its discussion of another motion filed in this proceeding. DOC-132 at 6-7. The Temple herein provides additional discussion of that Notice in response to the decision of TMT respond to the Notice.

II. ARGUMENT

A. THE HEARING OFFICER CAN DETERMINE THE EXISTENCE OF THE RESTORED KINGDOM GOVERNMENT.

TMT argues that the Kingdom is not a necessary and indispensable party because the Kingdom does not exist. DOC-151 at 2.¹

TMT relies on an observation in the Notice that the official position of the United States is that the Kingdom does not exist. *Id. citing* Notice at 7.

The fact that the United States Government does not recognize the restored Kingdom of Hawai'i Government does not end the inquiry as to the Kingdom's existence.

¹ A fictional foreign corporation comes into Hawai'i to argue that the Hawaiian people have no right to restore the government stolen from them by foreigners. The colonial mentality is alive and well.

While TMT repeats "the Kingdom does not exist" mantra seven times in nine pages, DOC-159 at 2 (three times), 6, 8 (three times), the King and the Kingdom remain. The proof of the Kingdom's existence, manifested over the past twelve years through the activities of numerous government officials, is found at www.KingdomofHawaii.info.

There is a distinction between evaluating whether an acting government meets the legal tests to be acknowledged as a government and whether one nation grants diplomatic recognition to another. Whether a nation meets the international standards for being acknowledged as demonstrating the attributes of statehood is a separate inquiry from whether the nation is recognized diplomatically. See DOC-79 at 9-11.

The first inquiry is a question of fact. The second is a question of politics.

TMT appears to conflate the two inquiries. TMT fails to acknowledge that the Hearing Officer can conduct an inquiry to determine whether the restored Kingdom Government has the attributes of statehood set forth in international law and make a determination on the question of the Kingdom's existence based on the facts.

That inquiry would not mean that the Hearing Officer would make a determination on whether the United States should recognize the restored Kingdom Government. As argued by TMT, that determination would be a political question.

B. THE POLITICAL QUESTION PRINCIPLE CALLS FOR DISMISSAL OF THIS CONTESTED CASE.

The political question argument by TMT is problematic for TMT.

To the extent the Kingdom argues that it does exist and has evidence of its existence, this Hearing Officer is prohibited from inquiring, let alone determining, its existence. Indeed the question of whether the Kingdom exists presents a non-justiciable political question that this Hearing Officer lacks subject matter jurisdiction over.

DOC 151 at 6.

If there is a claimant that has appeared to challenge the exclusive ownership of the land UH seeks to lease to TMT and the Hearing Officer/BLNR does not have

the jurisdiction to determine either the *bona fides* of the claimant or the legitimacy of the claim because the question is political, then the case must be dismissed.

C. COMPLETE RELIEF CANNOT BE AFFORDED AMONG THE EXISTING PARTIES BECAUSE SUCH RELIEF IGNORES THE UNRESOLVED CLAIM TO THE LAND.

In order to argue that complete relief can be afforded among the existing parties, DOC-151 at 7-8, TMT must repeat, like a mantra, that the Kingdom does not exist. In other words, TMT asserts on its own authority the determination that TMT argues that the Hearing Officer cannot make.

The essential issue relevant to this contested case raised by the Notice is the presence of a competing claim to the land, a consideration that precedes the question whether the permit should be issued. If all the land-owners are not in agreement to lease the land, the permit application become a nullity.

Based on the Notice, the Kingdom would not agree to the lease, if the Kingdom were a party in this case. Complete relief among the existing parties is, therefore, impossible.

C. THE RESTORATION OF A HAWAIIAN GOVERNMENT IS IN PROCESS.

Hawai'i is in the midst of a great transition in which the United States is a participant. The United States does envision the restoration of some form of independent or quasi-independent government in Hawai'i. In 1993, Congress passed legislation that authorized Kaho'olawe's return to the state, to be held in trust until it can be returned to a sovereign Hawaiian entity. H.R. 3116, Title X – 103rd Congress (1993-1994). That sovereign Hawaiian entity is not yet determined.

See also <https://www.doi.gov/pressreleases/interior-department-proposes-pathway-re-establishing-government-government> (United States Department of

Interior proposing rule to facilitate creation of a Native Hawaiian Governing Entity and government-to-government relations between that entity and the United States Government.)

The fact that the United States Department of Interior envisions the restored nation as limited to Native Hawaiians does not mean that is the only option available. The existence of that option does, however, legitimize the actions of the Hawaiian Independence Movement seeking other alternatives, including the restoration of the Kingdom. Having acknowledged the right of at least some Kingdom subjects to have their independence restored, the United States has opened up the possibility of an ultimate resolution in which the Kingdom itself is fully restored.

As to just what lands will be transferred to the restored nation, that is a matter to be addressed. The King has made clear that he expects all national lands of the Kingdom to be returned to the restored nation. Notice, Exhibit 1.

Certainly the first lands to be considered will be the lands that the United States claims were ceded to the United States by the so-called Republic of Hawai'i Government, as opposed to lands in private hands. Such lands might well include the Kingdom Government lands underneath the TMT site.

The restoration is a process that is underway. The Hearing Officer can acknowledge that process, the possibility that the lands at issue in this contested case will be part of the lands transferred to a new jurisdiction, and that the new jurisdiction may object to the construction of the TMT.

This uncertainty is another basis for the Hearing Officer to decide this case cannot be resolved as currently presented.

One aspect of a transition in process is that new information arises that changes the political and legal landscape. The Notice points to such information and the absence of any decisions by relevant political or legal bodies addressing those developments. Notice at 7.

Until such time as these new developments are addressed, the continued validity of decisions made prior to addressing these new developments is unknown.

III. CONCLUSION

TMT may cover its eyes and pretend the Kingdom went away. When sight is restored, however, the Kingdom will still be standing there waiting for justice.

The argument that the Kingdom does not exist requires more than simply the United States Government pronouncing that reality to be the only reality. When there is substantive evidence that the Kingdom still exists because the annexation treaty was legally ineffective and that the restored Kingdom Government has performed acts of governance sufficient to meet the international tests for manifesting attributes of statehood, simple pronouncements are insufficient, particularly pronouncements by a government that has unclean hands.

Dated: August 3, 2016 Puako, Hawai'i, Kingdom of Hawai'i

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

EXHIBIT 1

Declaration of Lanny Alan Sinkin

I declare the following to be true and correct:

1. I serve as Ali'i Mana'o Nui (Spiritual Advisor and Chief Advocate) by appointment of Ali'i Nui Mō'i (High Chief/King) Edmund Keli'i Silva, Jr. of the restored Kingdom of Hawai'i.
2. At the direction of the King, I filed the Kingdom of Hawai'i Notice of Absence of Necessary and Indispensible Party before the Hearing Officer in the State of Hawai'i Board of Land and Natural Resources contested case designated as Case No. BLNR-CC-16-002.

Dated: August 3, 2016

_____/s/_____
Lanny Alan Sinkin

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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 RESPONSE TO TMT INTERNATIONAL OBSERVATORY, LLC'S RESPONSE TO THE PURPORTED KINGDOM OF HAWAII'S NOTICE OF ABSENCE OF NECESSARY AND INDISPENSIBLE PARTIES [DOC-79] 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: August 3, 2016

_____/s/_____
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Michael Cain, Custodian of Records
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Harry Fergerstrom
P.O. Box 951
Kurtistown, Hawaii 96760

Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

Dated: August 4, 2016

_____/s/_____
Lanny Alan Sinkin