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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

Contested Case Hearing Re Conservation
District Use Application (CDUA) HA-3568 for
the Thirty Meter Telescope at the Mauna Kea
Science Reserve, Ka'ohē Mauka, Hāmākua,
Hawai'i, TMK (3) 4-4-015:009

CASE NO. BLNR-CC-16-002

THE UNIVERSITY OF HAWAI'I AT
HILO'S **OPPOSITION TO TEMPLE OF
LONO'S MOTION FOR
RECONSIDERATION, FILED
AUGUST 7, 2016 [DOC. 178];
CERTIFICATE OF SERVICE**

**THE UNIVERSITY OF HAWAI'I AT HILO'S OPPOSITION TO TEMPLE OF LONO'S
MOTION FOR RECONSIDERATION, FILED AUGUST 7, 2016 [DOC. 178]**

The University of Hawai'i at Hilo ("University"), through its counsel, submits its
Opposition to the Temple of Lono's ("**Temple**") Motion for Reconsideration ("**Motion**") filed
on August 7, 2016 [Doc. 178].

The Motion, made pursuant to Hawai'i Administrative Rules ("**HAR**") § 13-1-39,¹ asks
the Hearing Officer to reconsider what the Temple characterizes as an oral ruling at the August

¹ HAR § 13-1-39. Reconsideration. (a) Upon a motion of a party, the board may reconsider a
decision it has made on the merits only if the party can show that:

- (1) New information not previously available would affect the result; or
- (2) A substantial injustice would occur.

(b) In either case, a motion for reconsideration shall be made not later than five business days
after the decision or not less than fourteen days prior to any deadline established by law for the
disposition of the subject matter, whichever is earlier.

5, 2016 pre-hearing conference, which ruling stated that “the status of the State of Hawaii will not be an issue in this contested case hearing.” Motion at 1; Temple Mem. in Sup. at 1. The Motion also asserts that the Hearing Officer’s ruling is premature, because her ruling deals with issues set forth in Perpetuating Unique Educational Opportunities’ (“**PUEO**”) Motion to Set the Issues [Doc. 99], which will be heard at the pre-hearing conference scheduled on August 12, 2016. Temple Mem. in Sup. at 2.

To the extent that the Hearing Officer’s statement on August 5, 2016 is characterized as a ruling, no formal written order has been issued by the Hearing Officer on this matter. Therefore, as a preliminary matter, the University objects to the Motion because it is premature.

The Temple also mischaracterizes PUEO’s Motion to Set the Issues as requesting a ruling on the status of the State of Hawai‘i. While PUEO’s Motion to Set the Issues acknowledges that parties may, and in fact have, raised the status of the State of Hawai‘i as an issue in this contested case, the Motion to Set the Issues does *not* ask for a ruling on the merits of the arguments dealing with the status of the State of Hawai‘i. Therefore, the Hearing Officer’s statements at the hearing does not yet constitute a formal order or ruling on the Motion to Set the Issues, which will be heard at the pre-hearing conference on August 12, 2016. Again, the Motion is premature.

Furthermore, the Hearing Officer’s statement at the August 5, 2016 pre-hearing conference simply reiterated the Board of Land and Natural Resources’ (“**Board**”) ruling as set forth in Minute Order No. 14 [Doc. 124]. In Minute Order No. 14, the Board explicitly addressed the status of the State of Hawai‘i, and rejected the arguments made by Mr. Dwight J. Vicente’s *Motion to Disqualify Judge Riki Mae Amano (Ret.); State of Hawaii Lack of*

Jurisdiction in this Contested Case Hearing, filed July 22, 2016 [Doc. 80] (“**Vicente Motion**”).²

The Board held that the State of Hawai‘i is a legal State in the Union and that there are no “issues with or cloud on the State's title to the land at issue in this matter,” and that the Board has jurisdiction. Minute Order No. 14 at 2 [Doc. 124].

In response to Minute Order No. 14, the Temple filed its *Motion to Vacate Ruling and Supplement Response Time*, filed July 23, 2016 [Doc. 127] (“**Motion to Vacate**”). The Temple’s Motion to Vacate, although not in name, is in form and essence a motion for reconsideration of the Vicente Motion, which presents the same arguments as to the status of the State of Hawai‘i and its jurisdiction that the Temple asserts in its Motion and various other pleadings. At the pre-hearing conference on August 5, 2016, the Hearing Officer did not deny the Temple's Motion to Vacate, but rather took it under advisement to clarify the Board’s rulings on its jurisdiction.


The Motion to Vacate should be denied because, as set forth in Minute Order No. 14, the Board has ruled that it has jurisdiction over the lands that are subject to this contested case hearing and the Temple's arguments to the contrary involve a determination on political questions over which the Board and Hearing Officer do not have jurisdiction to decide.

² In his motion, Mr. Vicente argued, *inter alia*, that the State of Hawai‘i lacks jurisdiction to hear the above-captioned contested case due to the illegal annexation of the Kingdom of Hawaii to the United States. Vicente Motion at 1. While Mr. Vicente’s and the Temple’s arguments regarding the status of the State of Hawai‘i are not verbatim, these arguments essentially amount to whether or not the Kingdom of Hawai‘i still exists and seek to address issues which are political questions over which the Hearing Officer and Board do not have jurisdiction to address. See *The University of Hawai‘i at Hilo's Substantive Joinder to [PUEO's] Motion to Set the Issues Filed July 18, 2016 [Doc. 99]*, filed August 1, 2016 [Doc. 140] (“**University Joinder**”) at 11-13. Accordingly, under the doctrine of collateral estoppel, the University considers arguments made by one party and ruled on by the Board or Hearing Officer to apply to the same arguments on the same issues made by other parties. To the extent that arguments and objections made in the University Joinder address these same issues, the University Joinder is hereby incorporated by reference.

The Temple has repeatedly made the same arguments, without presenting any new information regarding the status of the State of Hawai'i and continues to ask the Hearing Officer to reconsider, and reconsider again, those same arguments, with no regard for judicial economy or the time of other parties to this matter.³ See HAR § 13-1-39(a) (providing that the Board may consider a motion for reconsideration only if: "(1) New information not previously available would affect the result; or (2) A substantial injustice would occur").

For these reasons, the University respectfully requests that the Motion be denied as premature, because it has been filed in advance of any actual order, but also because it is improper since the Board has already ruled on this issue.

DATED: Honolulu, Hawai'i, August 11, 2016.



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³ See also *The University of Hawai'i at Hilo's Opposition to Temple of Lono's Motion to File Motion Out of Time [Doc. 179]*, filed August 10, 2016 (discussing the Temple's repeated attempts to relitigate similar or the same issues through various filings).

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Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

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The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

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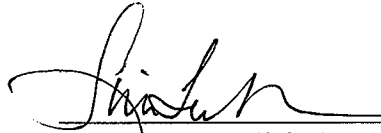
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DATED: Honolulu, Hawai'i, August 11, 2016.

A handwritten signature in black ink, appearing to read "Ian L. Sandison", written over a horizontal line.

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