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WATANABE ING LLP
A Limited Liability Law Partnership

J. DOUGLAS ING #1538-0
ROSS T. SHINYAMA #8830-0
SUMMER H. KAIawe #9599-0
First Hawaiian Center
999 Bishop Street, 23rd Floor
Honolulu, Hawaii 96813
Telephone No.: (808) 544-8300
Facsimile No.: (808) 544-8399
E-mails: rshinyama@wik.com

Attorneys for
TMT INTERNATIONAL OBSERVATORY, LLC

BOARD OF LAND AND NATURAL RESOURCES
FOR THE STATE OF HAWAI'I

IN THE MATTER OF

A Contested Case Hearing Re Conservation
District Use Permit (CDUP) HA-3568 for the
Thirty Meter Telescope at the Mauna Kea
Science Reserve, Kaohe Mauka, Hamakua
District, Island of Hawaii, TMK (3) 4-4-
015:009

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Case No. BLNR-CC-16-002

**TMT INTERNATIONAL
OBSERVATORY, LLC'S *SUBSTANTIVE
JOINDER* TO APPLICANT THE
UNIVERSITY OF HAWAI'I AT HILO'S
MEMORANDUM IN OPPOSITION TO
BRANNON KAMAHANA KEALOHA'S
KAMAHANA KEALOHA: INVOKING
AMERICAN LAW; MOTION
DEMANDING INVENTORY OF THE
SO-CALLED CEDED LANDS
CONTAINING THE SPECIFIC LAND
AND PARCEL THE TIO PLANS TO BE
SUB-LEASED BY UH WHO LEASES
SAID LANDS FROM THE BLNR, A
SURVEY OF THESE LANDS ALSO,
FILED AUGUST 10, 2016 [DOC. 191];
CERTIFICATE OF SERVICE**

TMT INTERNATIONAL OBSERVATORY, LLC'S *SUBSTANTIVE JOINDER TO APPLICANT THE UNIVERSITY OF HAWAI'I AT HILO'S MEMORANDUM IN OPPOSITION TO BRANNON KAMAHANA KEALOHA'S KAMAHANA KEALOHA: INVOKING AMERICAN LAW; MOTION DEMANDING INVENTORY OF THE SO-CALLED CEDED LANDS CONTAINING THE SPECIFIC LAND AND PARCEL THE TIO PLANS TO BE SUB-LEASED BY UH WHO LEASES SAID LANDS FROM THE BLNR, A SURVEY OF THESE LANDS ALSO, FILED AUGUST 10, 2016 [DOC. 191]*

I. INTRODUCTION

TMT International Observatory, LLC (“TIO”), by and through its undersigned counsel, hereby substantively joins the *University of Hawai'i at Hilo's Memorandum in Opposition to Brannon Kamahana Kealoha's Kamahana Kealoha: Invoking American Law; Motion Demanding Inventory of the So-Called Ceded Lands Containing the Specific Land and Parcel the TIO Plans To be Sub-Leased by UH Who Leases Said Lands From the BLNR, a Survey of these Lands Also*, filed August 10, 2016 [Doc. 191] (the “Opposition”).

II. DISCUSSION

Although the Kamahana Kealoha: Invoking American Law; Motion Demanding Inventory of the So-Called Ceded Lands Containing the Specific Land and Parcel the TIO Plans to be Sub-Leased by UH Who Leases Said Lands From the BLNR, a Survey of these Lands Also, filed August 10, 2016 [Doc. 191] (the “Motion”) is titled as a demand for an inventory of ceded lands, the form and purported substance of the Motion is yet another baseless challenge to the State of Hawaii's ownership and control of ceded lands. As set forth in the Opposition, the Motion should be denied because it is well-established that:

1. The State of Hawaii has good title to ceded lands conveyed to it by the United States, and the State of Hawaii holds title to such lands in “absolute fee;”
2. The Island of Hawaii is a part of the State of Hawaii, and within the State of Hawaii's jurisdiction;

3. The Board has good title to the public lands within its jurisdiction, including public lands the State Land Use Conservation District, such as the Mauna Kea Science Reserve and the proposed site of the TMT;
4. The Board has ruled that it has jurisdiction over the proposed site of the TMT, which lands are the subject of this proceeding; and
5. To the extent Mr. Kealoha disputes the State of Hawaii's authority over ceded lands because he believes that the annexation of the Hawaiian Islands by the United States was a legal nullity, this argument directly challenges the State's sovereignty, and as such, presents a nonjusticiable political question over which the Board and Hearing Officer do not have jurisdiction to determine.

In addition, although the Motion cites State v. Kaulia, 128 Hawaii 479 (2014) for the proposition that the Island of Hawaii is not a part of the State of Hawaii within the State's jurisdiction, Kaulia directly contradicts Mr. Kealoha's specious proposition. See Motion (unpaginated) at 2. In Kaulia, the Supreme Court of Hawaii determined that because Kaulia's conduct took place in Kona in the County and State of Hawaii, Kaulia is subject to the State's jurisdiction. 128 Hawaii at 487, 291 P.3d 377, 385. The County of Hawaii is comprised of the Island of Hawaii, which is, according to Kaulia, subject to the State's jurisdiction.

Moreover, the Hawaii Supreme Court in Kaulia expressly rejected the argument that the State lacked subject matter jurisdiction over Kaulia's criminal prosecution based on the illegitimacy of the State of Hawaii, "we reaffirm that [w]hatever may be said regarding the lawfulness' of its origins, the State of Hawaii . . . is now a lawful government." Kaulia, 128 Hawaii at 487, 291 P.3d 377, 385 (internal quotations omitted) (citing State v. Fergerstrom, 106 Hawaii 43, 55, 101 P.3d 652, 664 (App. 2004), *aff'd*, 106 Hawaii 41, 101 P.3d 225 (2004)).

III. CONCLUSION

Based on the foregoing, and for all the reasons and authorities stated in the Opposition, the Motion should be denied.

DATED: Honolulu, Hawaii, August 22, 2016.



J. DOUGLAS ING
ROSS T. SHINYAMA
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Attorneys for
TMT INTERNATIONAL
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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that the foregoing document was duly served upon the following parties by the means indicated below:

Michael Cain
Office of Conservation and Coastal Lands
1151 Punchbowl, Room 131
Honolulu, HI 96813
michael.cain@hawaii.gov
*Custodian of the Records
(original + digital copy)*

Carlsmith Ball LLP
Ian L. Sandison, Esq.
isandison@carlsmith.com
*Counsel for the Applicant
University of Hawai'i at Hilo*

Richard N. Wurdeman, Esq.
RNWurdeman@RNWLaw.com
*Counsel for the Petitioners
Mauna Kea Anaina Hou,
Clarence Kukauakahi Ching,
Flores-Case 'Ohana, Deborah
J. Ward, Paul K. Neves, and
Kahea: The Environmental
Alliance*

Harry Fegerstrom
P.O. Box 951
Kurtistown, HI 96760

Mehana Kihoi
uhiwai@live.com

C. M. Kaho'okahi Kanuha
kahookahi@gmail.com

Joseph Kualii Lindsey Camara
kualiic@hotmail.com

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

J. Leina'ala Sleightholm
leina.ala.s808@gmail.com

Maelani Lee
maelanilee@yahoo.com

Lanny Alan Sinkin
lanny.sinkin@gmail.com
*Representative for The Temple
of Lono*

Kalikolehua Kanaele
akulele@yahoo.com

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

Tiffnie Kakalia
tiffniekakalia@gmail.com

Glen Kila
makakila@gmail.com

Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

Brannon Kamahana Kealoha
brannonk@hawaii.edu

Cindy Freitas
hanahanai@hawaii.rr.com

William Freitas
pohaku7@yahoo.com

Richard L. DeLeon
kekaukike@msn.com

DATED: Honolulu, Hawaii, August 22, 2016.



J. DOUGLAS ING
ROSS T. SHINYAMA
SUMMER H. KAIWE
Attorneys for
TMT INTERNATIONAL
OBSERVATORY, LLC