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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

**[PROPOSED] MINUTE ORDER NO.  
\_\_\_ DENYING MAELANI LEE'S  
MOTION TO INTERVENE [DOC. 84];  
CERTIFICATE OF SERVICE**

**[PROPOSED] MINUTE ORDER NO. \_\_\_ DENYING  
MAELANI LEE'S MOTION TO INTERVENE [DOC. 84]**

On August 5, 2016, a hearing on Maelanie Lee's *Motion to Intervene* [Doc. 84], filed on  
July 13, 2016 ("**Motion**"), was held in Hilo, Hawai'i at the YMCA Building, 300 West  
Lanikaula Street.

The following persons were present:

Julie H. China, Esq., Deputy Attorney General and William Wynhoff, Esq., Deputy  
Attorney General

Stephen Michael Cain, Staff Planner

Richard N. Wurdeman, Esq., for Mauna Kea Anaina Hou, for and with Kealoha Pisciotta,  
Clarence Kukauakahi Ching, Pualani Case, and E. Kalani Flores, with Keomailani Van Gogh.

Timothy Lui-Kwan, Esq., John P. Manaut, Esq. and Ian Sandison, Esq., for the University of Hawai‘i-Hilo (“UH-Hilo”), with David Lonborg, Esq., Stephanie Nagata and Bob McLaren.

J. Douglas Ing, Esq. and Ross Shinyama, Esq. for TMT International Observatory, LLC. (“TIO”), with Sandra Dawson.

Lincoln Ashida, Esq. for Perpetuating Unique Educational Opportunities Inc. (“PUEO”), with Bill Brown.

Lanny Alan Sinkin for Lono Temple with Kahuna Nobriga

Kalikolehua Kanaele

Harry Fergerstrom

Richard DeLeon

Mehana Kihoi

C. M. Kaho‘okahi Kanuha

Joseph Kualii Lindsey Camara

Jennifer Leina‘ala Sleightholm

Maelani Lee

Stephanie-Malia Tabbada

Tiffnie Kakalia

Dwight J. Vicente

Brannon Kamahana Kealoha

Cindy Freitas

William K. Freitas

Ivy McIntosh (witness)

Wilma Holi (witness)

Patricia Ikeda (witness)

David Louie, Esq. for the Attorney General and Department of the Attorney General.

In relation to the Motion, the following documents were considered:

| <b>Doc. No.</b> | <b>Title</b>   | <b>Date</b> | <b>Counsel/Party</b> |
|-----------------|--|-------------|----------------------|
| 136             | The University of Hawaii at Hilo’s memorandum in opposition to Maelani Lee’s Motion to intervene filed July 13, 2016 [Doc. 84]; Declaration of counsel; Exhibit "1"; COS | 08/01/2016  | UH-Hilo              |
| 146             | TMT International Observatory, LLC’s opposition to Maelani Lee’s motion to intervene [Doc. 84]; COS  | 08/01/2016  | TIO                  |

The Motion, entitled a motion to intervene, seeks judicial notice of certain “congressional facts” that relate to issues involving the sovereignty of the Hawaiian Islands. The Motion also asks the Hearing Officer to order the State to provide clear title to the lands within the State of

Hawai'i and for proof that Mauna Kea is within the State of Hawai'i.

The Hearing Officer heard arguments opposing the Motion on the grounds that Ms. Lee's claims raise issues that are not within the subject matter jurisdiction of the Board of Land and Natural Resources ("**Board**") and contradict controlling legal precedent.

On July 22, 2016, the Board issued Minute Order No. 14 [Doc. 124] addressing substantially the same claims as those made in the Motion. In Minute Order No. 14, the Board rejected any argument that the "State of Hawai'i is not legally a State in the Union, that there is any issue with or cloud on the State's title to the land at issue in this matter, or that the Board lacks jurisdiction" over the Mauna Kea lands. Minute Order No. 14 at 2.

The Motion, all related and oral submissions from counsels and/or parties, the Proposed Minute Order and all submissions related thereto, all applicable law, and the entire record having been considered by the Hearing Officer, and for good cause shown, the Hearing Officer finds that the Ms. Lee's claims are not properly before the Hearing Office in this contested case proceeding as issues related to the legality of the overthrow, the status of the State of Hawai'i and the State of Hawai'i's jurisdiction over the land within the State, are nonjusticiable political questions which the Board and the Hearing Office lack subject matter jurisdiction to hear. *See Sai v. Clinton*, 778 F.Supp.2d 1 (D. D.C. 2011), *aff'd sub. nom.*, *Sai v. Obama*, 2011 WL 4917030, at \*3 (D.C. Cir. Sept. 26, 2011) ("Since its annexation in 1898 and admission to the Union as a State in 1959, Hawaii has been firmly established as part of the United States. The passage of time and the significance of the issue of sovereignty present an unusual need for unquestioning adherence to a political decision already made.") (citations omitted); *see also Baker v. Carr*, 369 U.S. 186, 212 (1962); *Wang v. Masaitis*, 416 F.3d 992 (9th Cir. 2005). Additionally, judicial notice of the "congressional facts" that Ms. Lee seeks are not appropriate

because Hawai'i courts have never taken judicial notice of an existing or continued sovereign governing Hawaiian Kingdom entity. *See State v. French*, 77 Hawai'i 222, 228, 883 P.2d 644, 650 (App. 1994). Therefore,

IT IS HEREBY ORDERED that the Motion is DENIED.

The deadline for submission of any **motion** to reconsider this minute order shall be submitted no later than **Thursday, October 13, 2016 at 4:30 p.m.** Any **responses to motions to reconsider** shall be submitted no later than **Friday, October 14, 2016 at 4:30 p.m.** Any motions for reconsideration of this minute order shall be treated as a non-hearing motion unless otherwise ordered by this Hearing Officer.

DATED: Honolulu, Hawai'i, October \_\_, 2016.

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Judge Riki May Amano (Ret.)  
Hearing Officer

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

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

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DATED: Honolulu, Hawai'i, October 5, 2016.



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