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BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

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**
The Thirty Meter Telescope at the Mauna) **PROPOSED MINUTE ORDER NO. ____**
Kea Science Reserve, Kaohe Mauka,) **DENYING TEMPLE OF LONO'S**
Hamakua District, Island of Hawai'i,) **MOTION TO DISMISS FOR LACK OF**
TMK (3) 4-4-015:009) **JURISDICTION BASED ON**
) **UNRESOLVED LAND CLAIM**
_____) **[DOC-126] [310], EXHIBIT 1; COS**

**TEMPLE OF LONO RESPONSE TO PROPOSED MINUTE ORDER NO. ____ DENYING
TEMPLE OF LONO'S MOTION TO DISMISS FOR LACK OF JURISDICTION BASED
ON UNRESOLVED LAND CLAIM [DOC-126] [310]**

The proposed order relies primarily on the legal argument that the issues the Temple seeks to raise are already decided by prior court rulings. Proposed Order at 2 citing *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009).

The proposed order ignores the expressed intent of the Temple to create a record upon which the Temple could argue for overturning prior decisions.¹

The proposed order should acknowledge the Temple's argument and provide a reasoned explanation as to why the Temple should not be allowed to create a

¹ The Temple is one of the parties that cannot afford the transcripts of the proceedings to date. The Hearing Officer has repeatedly refused to order that the parties be given access to the transcript to at least review in order to select pages for purchase that are relevant to a given pleading, such as this one. Part of the Temple's argument for creating a record upon which a precedent could be overturned is contained in the hearing transcript.

record in order to later argue for overturning a precedent applicable today in this proceeding.

To simply forbid the Temple to create a record treats the law as static – a monolithic compilation of prior rulings that cannot be changed. That approach takes an absolutist and uncompromising approach to the law and to the questions raised by the Temple’s motion. The worship of precedent is not a catechism that all those involved in a proceeding such as this one must live by.

The Temple has also called the Hearing Officer’s attention to the existence of a functioning Kingdom Government and a King by incorporating the Notice filed by the Kingdom, DOC-79 in its pleadings. DOC-126 (Memorandum at 1).

Specific to this case, the Temple also filed a recent Resolution issued by the Kingdom asserting that “the Kingdom never ceased to exist,” *ibid.*, Exhibit 1 at 3, and “reclaims all lands belonging to the Kingdom prior to 1893.”

There are new facts on the ground. There are no prior cases where a party introduced and the court ruled upon substantial evidence of an existing restored Kingdom Government.

The Hearing Officer has the jurisdiction to hear the issue of the Kingdom’s continued existence and to hear the issue of the legitimacy of the restored Kingdom Government’s claim to satisfy the tests for recognition as a functioning government. Those are factual issues subject to determination by application of international and domestic law.

The broad brush application of the political question doctrine to remove jurisdiction from the Hearing Officer that the Hearing Officer clearly has as a trier of

facts distorts the proper separation of powers discussion.²

Historically, the so-called Republic of Hawai'i supposedly ceded lands belonging to the Kingdom to the United States. When Hawai'i supposedly became a State, the federal government transferred 1.2 million acres of that land to the State to be held in public trust for Hawaiian citizens. That land remains in a trust to this day.

The State may claim the right to dispose of trust lands. *Hawai'i v. Office of Hawaiian Affairs*, supra. That does not mean that the State owns those lands. The State is acting in the position of a trustee, not an owner.

If the United States were to embrace the truth of the act of war that destroyed the legitimate Kingdom Government, as set forth in the statement by the President of the United States at the time, DOC-79 at 2-4, and dissolve the trust, the lands would go back to the Kingdom, not the State of Hawai'i or the United States.³

In its Application, the Applicant made the claim that the State owns the lands at issue in this proceeding. DOC-r-1 at 2.

The Temple joined issue on that claim by filing a copy of the Kingdom's Resolution. DOC-126, Exhibit 1.

The land issue is now ripe to be considered in this case.

² The proposed order relies on determinations by the courts on land issues related to the United States seizure of the Kingdom, e.g. *Hawaii v. Office of Hawaiian Affairs*, supra., while arguing that such determinations are reserved to the Executive Branch. Proposed Order at 1.

³ The Republic of Hawai'i and the Territory of Hawai'i, supposed successors to the Kingdom Government, no longer exist.

The issue is unique in legal history. A foreign corporation is seeking to lease national lands claimed by the Kingdom without permission of the Kingdom and in the presence of a King and restored Kingdom Government assertion of ownership rights to the land.

There has never been a case that addressed such a land issue involving the King of the restored Kingdom asserting ownership of lands.

The proposed order relies upon the courts accepting the legality of past historical actions by the United States Government pursuant to the political question doctrine. Proposed Order at 1.

The Hawai'i Supreme Court test for a political question is:

Prominent on the surface of any case held to involve a political question is found [:(1)] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [(2)] a lack of judicially discoverable and management standards for resolving it; or [(3)] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [(4)] the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or [(5)] an unusual need for unquestioning adherence to a political decision already made; or [(6)] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Trustees of the Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 170, 737 P.2d 446, 455 (1987) quoting *Baker v. Carr*, 369 U.S. 186 (1962).

Applying that test to the facts in this case supports a finding that for both legal and equitable reasons the Temple's motion should be granted.

As to the first test, the determination of property ownership is not a question reserved to the Executive or Congressional branches of the United States

Government. An adjudicatory body is equally competent to make such determinations.

What if a person showed up claiming to be an owner of the land on which the telescope is proposed to be built? What if the basis for the claim was evidence that had never been adjudicated before? Would the Hearing Officer not have to consider evidence regarding ownership in order to determine whether there is a competing claim to the land or not? If there is a competing claim, would the Hearing Officer not have to vacate the application unless both claimants agreed to the permit? Those are decisions that the Hearing Officer can make.

As to the second test, the standards for resolving the question of the Kingdom's continued existence are set forth in international law. For example, the 1933 Montevideo Convention on Rights and Duties of States provides the following standards: the State as a person under international law possesses the four qualifications of (a) a permanent population, (b) a defined territory, (c) a government, and (d) the capacity to enter into relations with other states.

The King and the Kingdom are prepared to present evidence satisfying such standards. DOC-79 at 7-8.

The Hearing Officer is perfectly capable of determining whether the restored Kingdom Government meets those standards.

As to the third test, deciding the legal question of whether annexation of one nation by another can be effectively accomplished by the passage of a joint resolution by only the annexing country is a question well within the jurisdiction of

the Hearing Officer. That determination does not require any initial policy determination of “a kind clearly for non-judicial discretion.”

As to the fourth test, determining the legality of an Executive Branch or Congressional action is an adjudicatory function, not a disrespectful act.

As to the fifth test, the Temple argues for a balancing approach. Certainly there is a case to be made that any decision that furthers the Hawaiian Independence Movement’s goal of restoring the Kingdom Government will cause upheaval within the Hawaiian Archipelago claimed by the Kingdom because the Kingdom Government has been *in absentia* for so long.

That does not mean that such upheaval cannot be managed with a peaceful transition agreement between the United States and the Kingdom that minimizes adverse impacts.

The balancing test proposed by the Temple is whether correcting the harm done by the illegal destruction of a foreign government outweighs any “need for unquestioning adherence to a political decision already made.”

The Temple would argue that restoring the Kingdom to its rightful place within the community of nations and terminating the genocidal suppression Native Hawaiians outweighs the need to uphold what was clearly a terrible action on the part of the United States Government.

The suggested balancing test is a matter subject to factual determination.

In *State v Kaulia*, 128 Hawai’i 479, 487, 291 P.3d 377, 385 (2013), the court said:

[w]hatever may be said regarding the lawfulness of its origins, the State of Hawai’i ... is now the lawful government”) (internal question marks omitted).

The opening phrase of that sentence is unworthy of a righteous nation and an institution devoted to justice. The Kingdom's past is not a "whatever." That past is the theft of a nation. That theft had and continues to have major spiritual, psychological, cultural, economic, and health impacts on those who lost their nation.

If a thief stole a car and successfully evaded police for a year and then was caught with the car, would the thief be able to argue that history did not matter and that he was now the legitimate owner of the car because he occupied the car? Or argue that too much time had past, so corrective action was no longer possible? That is the argument for the Kingdom issues to be solely a political question.

How did such an argument apply to the State of Israel? The Jewish diaspora lasted for hundreds of years and still concluded with the Jewish people returning to their ancestral lands and their sacred land base.

There is no fundamental difference between the Jewish experience and the Hawaiian experience. The only real difference is that the Native Hawaiians are experiencing a diaspora in place, i.e. they are in exile in their own lands. The fact that they became part of the Kingdom prior to the theft of their nation simply adds the Kingdom to the list of parties to be restored.

More appropriate to consider is the plea, based in both a land claim and a spiritual connection, of the monarch of a small and powerless nation to a powerful nation considering annexation of the smaller nation.

I, Liliuokalani of Hawaii, by the Will of God named heir-apparent on the tenth day of April, A.D. 1877, and by the grace of God Queen of the Hawaiian Islands on the seventeenth day of January, A.D. 1893, do hereby protest against the ratification of a certain treaty, which, so I am informed, has been signed at Washington by Messrs, Hatch, Thurston, and Kinney, purporting to

cede those Islands to the territory and dominion of the United States. I declare such a treaty to be an act of -wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties, the perpetuation of the fraud whereby the constitutional government was overthrown, and, finally, an act of gross injustice to me.

BECAUSE the official protests made by me on the seventeenth day of January, 1893, to the so-called Provisional Government was signed by me, and received by said government with the assurance that the case was referred to the United States of America for arbitration.

BECAUSE that protest and my communications to the United States Government immediately thereafter expressly declare that I yielded my authority to the forces of the United States in order to avoid bloodshed, and because I recognized the futility of a conflict with so formidable a power.

BECAUSE the President of the United States, the Secretary of State, and an envoy commissioned by them reported in official documents that my government was unlawfully coerced by the forces, diplomatic and naval, of the United States; that I was at the date of their investigations the constitutional ruler of my people.

BECAUSE neither the above-named commission nor the government which sends it has ever received any such authority from the registered voters of Hawaii, but derives its assumed powers from the so-called committee of public safety, organized on or about the seventeenth-day of January, 1893, said committee being composed largely of persons claiming American citizenship, and not one single Hawaiian was a member thereof, or in any way participated in the demonstration leading to its existence.

BECAUSE my people, about forty thousand in number, have in no way been consulted by those, three thousand in number, who claim the right to destroy the independence of Hawaii. My people constitute four-fifths of the legally qualified voters of Hawaii, and excluding those imported for the demands of labor, about the same proportion of the inhabitants.

BECAUSE said treaty ignores, not only the civic rights of my people, but, further, the hereditary property of their chiefs. Of the 4,000,000 acres composing the territory said treaty offers to annex, 1,000,000 or 915,000 acres has in no way been heretofore recognized as other than the private property of the constitutional monarch, subject to a control in no way differing from other items of a private estate.

BECAUSE it is proposed by said treaty to confiscate said property, technically called the crown lands, those legally entitled thereto, either now or in succession, receiving no consideration whatever for estates, their title to which has been always undisputed, and which is legitimately in my name at this date.

BECAUSE said treaty ignores, not only all professions of perpetual amity and good faith made by the United States in former treaties with the sovereigns representing the Hawaiian people, but all treaties made by those sovereigns with other and friendly powers, and it is thereby in violation of international law.

BECAUSE, by treating with the parties claiming at this time the right to cede said territory of Hawaii, the Government of the United States receives such territory from the hands of those whom its own magistrates (legally elected by the people of the United States, and in office in 1893) pronounced fraudulently in power and unconstitutionally ruling Hawaii.

Therefore I, *Liliuokalani of Hawaii*, do hereby call upon the President of that nation, to whom alone I yielded my property and my authority, to withdraw said treaty (ceding said Islands) from further consideration. I ask the honorable Senate of the United States to decline to ratify said treaty, and I implore the people of this great and good nation, from whom my ancestors learned the Christian religion, to sustain their representatives in such acts of justice and equity as may be in accord with the principles of their fathers, and to the Almighty Ruler of the universe, to him who judgeth righteously, I commit my cause.

Done at Washington, District of Columbia, United States of America, this seventeenth day of June, in the year eighteen hundred and ninety-seven.

<http://libweb.hawaii.edu/digicoll/annexation/protest/liliu5.html>

The annexation treaty addressed by the Queen failed in the face of her protest and was withdrawn. The substance of the Queen's plea for justice remains.

With evidence supporting the existence of a restored Kingdom Government already in the record of this proceeding,⁴ the Hearing Officer should defer any determination on the question of who "owns" the land where the telescope wants to

⁴ That evidence includes the Writ of Quo Warranto issued by the Chief Justice of the Kingdom Supreme Court and served on the Hearing Officer in this proceeding. Exhibit 1.

build until such time as the political questions are answered by the other branches of the United States Government.

The Hearing Officer can contribute to the development of a record in this proceeding that may assist the other branches with relevant factual determinations. See Exhibit 2.

As to the sixth test, rather than experiencing any embarrassment of “multifarious pronouncements,” the United States can expect the approbation of Nations throughout the world, if the United States Government initiates a process of peaceful transition back to independence for the Kingdom of Hawai’i. Once that policy is known, there would be no reasons for any “multifarious pronouncements.”

Again, this proceeding can contribute to the initiation of that process. See Exhibit 2.

Dated: October 7, 2016

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

EXHIBIT 1



Chief Justice
Supreme Court of The Kingdom of Hawai'i
Jennifer Eileen Pawlowski

Writ of Quo Warranto

To: Riki May Amano, Hearing Officer, Contested Case Hearing BLNR-CC-002
1003 Bishop Street
Suite 1155, Pauahi Tower
Honolulu, Hawai'i 96813

You are hereby summoned to answer to a Writ of Quo Warranto issued by the Supreme Court of the Kingdom of Hawai'i in response to a Petition from the Crown. See Exhibit 1 attached hereto.

In its Petition, the Crown brought forth evidence that you are conducting a proceeding that may result in the "lease" of Crown lands to a foreign corporation without the consent of the Crown. Obviously, such an arrangement would be a fraud upon the supposed lessee.

In answering this Writ, please answer the following question:

By what authority do you and/or the agency that employs you claim the right to lease Crown lands? Please provide a detailed response.

Please provide your answer to the Court no later than the close of business twenty days from the date of service upon you.

Jennifer Pawlowski

Jennifer Pawlowski

Chief Justice



EXHIBIT 2

Lanny Alan Sinkin
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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) **TEMPLE OF LONO PROPOSED**
District Use Permit (CDUP) (HA-3568 for) **ALTERNATIVE MINUTE ORDER**
) **NO. ____ SUSPENDING DENIAL**
) **OF 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 [DOC-126] AND**
) **SUSPENDING EXCLUSION OF**
) **KINGDOM ISSUES IN MINUTE ORDER**
) **19 [DOC 281 AT 5]; COS**
)
TMK (3) 4-4-015:009)
)

TEMPLE OF LONO PROPOSED ALTERNATIVE MINUTE ORDER NO. ____
SUSPENDING DENIAL OF TEMPLE OF LONO MOTION TO DISMISS FOR LACK OF
JURISDICTION BASED ON UNRESOLVED LAND CLAIMS [DOC 126]AND
SUSPENDING EXCLUSION OF KINGDOM ISSUES IN MINUTE ORDER 19
[DOC 281 AT 5]

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.

In this document, the Kingdom made a

"limited appearance for the purpose of placing the Hearing Officer on notice that (1) the King and the Kingdom of Hawai'i are necessary and indispensable parties to this proceeding, (2) the King asserts sovereign immunity on behalf of himself and the Kingdom and declines to be a party to this proceeding, and (3) that the absence of necessary and indispensable parties that cannot be joined as parties requires the dismissal of this case.

Notice at 1.

TIO filed a response to that Notice. DOC-151.

The Temple of Lono filed a response to the TIO response. DOC-175.

As noted by the Temple, the Kingdom filed its notice to “provide the Hearing Officer information relevant to her jurisdiction, or lack thereof.” Ibid. at 1.

Also as noted by the Temple, “[t]he Kingdom did not seek any action from the Hearing Officer” Id.

The Hearing Officer never made any substantive ruling related to the Notice.¹

Subsequently, the Temple filed its Motion to Dismiss for Lack of Jurisdiction Based on Unresolved Land Claims. DOC-126.

In its motion, the Temple raised many of the same arguments made by the Kingdom in its Notice and incorporated the Notice by reference. Ibid. at 1.

TIO filed its opposition to the Temple Motion. DOC-149.

On August 5, 2016, the Temple’s motion to dismiss was heard.

The Hearing Officer orally denied the motion.

Also related is the litigation around Intervenor Dwight J. Vicente’s Motion to Disqualify Judge Riki May Amano (Ret.); State of Hawaii lack of jurisdiction to hear the contested case hearing. DOC-80, DOC-124, DOC-127, DOC-132, DOC-150, DOC-169, DOC-174.

¹ The Temple is one of the parties that lack the resources to afford a transcript. The Hearing Officer has repeatedly refused to take steps to make the transcript available for review by all parties. The Temple cannot, therefore, provide citations to or excerpts from the transcript to support the factual statements made in this pleading about what transpired in the pre-hearing conference. Of course, the Hearing Officer can check her transcript for the accuracy of this pleading.

There are numerous other pleadings filed that include issues related to the Kingdom. See DOC-247, DOC-256, DOC-265, DOC-266, DOC-267, DOC-268, DOC-272, DOC-273, DOC-275, DOC-281, DOC-293, DOC-299.

In DOC-281, the Hearing Officer did exclude Kingdom-related issues from the Contested Case Hearing.

Considering the entire record and upon further reflection, the Hearing Officer herein suspends the denial of the Temple's Motion to Dismiss for Lack of Jurisdiction Based on Unresolved Land Claims and suspends the exclusion of Kingdom issues found in DOC-281 at 5.

IT IS HEREBY ORDERED that a Pre-hearing Evidentiary Hearing be held on _____, 2016, to develop a record on Kingdom-related issues, to include the following:

- The Kingdom² 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.

² In this Order, the term "Kingdom" applies to the King and the Kingdom Government.

-- The Kingdom is sovereign and not subject to the jurisdiction of the Hearing Officer, unless the Kingdom voluntarily waives its sovereign immunity and agrees to the Hearing Officer's jurisdiction.

-- The Kingdom is not waiving its sovereign immunity, so the Hearing Officer 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 Hearing Officer 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).

These Kingdom issues are assigned to an evidentiary hearing for a number of reasons.

First, the issues surrounding the Kingdom continue to be raised because everyone understands that the Kingdom Government was destroyed by a small group of traitors dedicated to annexing the Kingdom to the United States, regardless of the wishes of the Hawaiian people.

Everyone also understands that the success of that destruction depended on the armed forces of the United States being called in by the United States Minister to Hawai'i, even though he had no authority to do so.

The Apology Resolution has a detailed history of the harms done to the Hawaiian people, even though it takes no responsibility for correcting those wrongs. Public Law 103-150, 107 Stat. 1510 (1993).³ The statement of the President of the United States at the time is an eloquent indictment of those who pursued the illegal act of war against the Kingdom. DOC-79 at 2-4. There are obviously equitable reasons to allow the proponents of restoring the Kingdom as an independent nation to be given an opportunity to be heard.

Second, the Kingdom issues are clearly of great importance to almost all the intervening parties contesting the permit application in this case. See infra, at 1-2. To admit numerous parties to this proceeding with no restrictions on the issues they could raise and then exclude issues of great concern to them from even being considered gives the appearance of a due process “bait and switch,” i.e. petitioners seeking to contest the permit application are granted party status to make them feel a part of the process and then denied an opportunity for their issues to be heard.

In making this decision, the Hearing Officer is well aware of the many cases that have been decided in which claims based on the existence of the Kingdom have been denied.

The Hearing Officer also takes note of the following argument by the Temple:

State courts in Hawai'i have been willing to address the question of the Kingdom's continued existence when raised. *See State v. Lorenzo*, 883 P.2d 641, 643-644 (1994), 77 Haw. 219 (Haw. App 1994) (“[T]here is no

³ While the Apology Resolution is not treated by the courts as a basis for any changes in the current legal situation, *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163, 175-76 (2009), the clauses of that document can be taken as at least admissions against interest. If the United States had used those admissions as a basis to pursue restoration of the Kingdom's independence, then those admissions would not be against the United States' interests.

clear consensus that the Kingdom does continue to exist. Consequently, it was incumbent on Defendant to present evidence supporting his claim. ... Lorenzo has presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature.") (emphasis added); see also *State v. French*, 77 Haw. 222, 228, 883 P.2d 644, 649 (Ct. App. 1994) (absence of a "factual (or legal) basis for concluding that the [Hawaiian] Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature." citing *Lorenzo*); *Nishitani v. Baker*, 921 P.2d 1182, 1191 (ICA Haw. 1996) ("Defendants have produced no evidence in support of their defense that as 'birth descendants of Native Hawaiians, who inhabited the Hawaiian Islands prior to 1778,' they enjoy immunity from a civil suit regarding contracts entered into by them in the State of Hawai'i."); *State v. Lee*, 976 P.2d 444, 456 (1999) ("the ICA has suggested that it is an open legal question whether the 'Kingdom of Hawai'i' still exists").

If the Kingdom was a party, the Kingdom would present an extensive evidentiary record of the actions taken by the restored Kingdom of Hawai'i Government demonstrating recognized attributes of sovereignty that would prove both the factual and legal existence of the Kingdom Government. That presentation would satisfy the objections of previous State courts that evidence of the existence of the Kingdom was not produced.

Notice at 8.

The court decisions cited by the Temple make three points: (1) the Kingdom's existence is at least an open question about which there is no consensus; (2) the existence of the Kingdom needs to be proven with evidence, something absent in all the previous cases cited; (3) the Kingdom's existence needs to be proven by demonstrating that the Kingdom has "recognized attributes of a state's sovereign nature."

The Temple argues that it can answer all three tests.

The evidentiary hearing would provide the Temple and others an opportunity to present evidence that would meet those tests.

As to whether the Hearing Officer has the jurisdiction to hear such evidence and make any decisions based on the evidence, TMT International Observatory, LLC

("TIO") argues that such questions are political and outside the jurisdiction of the Hearing Officer. See DOC-51.

The Hearing Officer rejects that argument in part because beginning with the *Lorenzo* case cited by the Temple, the courts have reserved to themselves the right to determine whether a given government exists "in accordance with recognized attributes of a state's sovereign nature." That determination is a factual question well within the purview of the Judicial Branch.⁴

Those arguing that a determination of the Kingdom's existence is a political question are conflating state status with diplomatic recognition. The determination that a state exists based on its performance is a separate inquiry from whether the United States should give diplomatic recognition to that state.

As far as the question of the Kingdom's existence, the Kingdom Notice, the Temple of Lono pleadings on this matter, and other intervenor presentations have provided persuasive evidence that there are arguments and evidence now available that prior legal proceedings did not consider regarding the history and that have never been considered by the Executive Branch or Congress of the United States to determine the current status of the Kingdom.

There is also the extensive evidence presented regarding the actions of the identified King and the Kingdom. See www.KingdomofHawaii.info.

The Temple and others seek to have those matters in the record, so that higher authorities than the Hearing Officer in this contested case can consider

⁴ That there may be political implications of such a finding is a matter for the other branches of government to address. The only question before the Hearing Officer concerns the "ownership" of a particular tract of land

whether there is sufficient evidence to change prior judicial decisions on matters related to the Kingdom.

The evidentiary hearing will provide the opportunity for those seeking to raise the Kingdom issue to create a record. What decisions will emerge from that hearing and how those decisions may affect the Contested Case is to be determined.

Regardless of the outcome, the Intervenors raising the Kingdom issues will at least have had an opportunity to be heard and an opportunity to make the case for the United States judicial system to reconsider prior decisions regarding the Kingdom and its status.

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 to reconsider this Minute Order shall be treated as a non-hearing motion unless otherwise ordered by this Hearing Officer.

Dated: _____

Judge Riki May Amano (Ret.)
Hearing Officer

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The Thirty Meter Telescope at the Mauna)
Kea Science Reserve, Kaohe Mauka,)
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 TEMPLE OF LONO RESPONSE TO PROPOSED MINUTE ORDER NO. ____ DENYING TEMPLE OF LONO'S MOTION TO DISMISS FOR LACK OF JURISDICTION BASED ON UNRESOLVED LAND CLAIM [DOC-126] [310], EXHIBIT 1** was served on the following parties by eMail:

michael.cain@hawaii.gov, isandison@carlsmith.com, tluikwan@carlsmith.com, jpm@carlsmith.com, lmcaneley@carlsmith.com, RNWurdeman@RNWLAW.com, rshinyama@wik.com, douging@wik.com, hankhawaiian@yahoo.com, kekaukike@msn.com, uhiwai@live.com, kahookahi@gmail.com, kualiic@hotmail.com, lsa@torkildson.com, njc@torkildson.com, leina.ala.s808@gmail.com, maelanilee@yahoo.com, lanny.sinkin@gmail.com, akulele@yahoo.com, s.tabbada@hawaiiantel.net, tiffniekakalia@gmail.com, makakila@gmail.com, brannonk@hawaii.edu, hanahanai@hawaii.rr.com, pohaku7@yahoo.com

and first class mail:

1. Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom
2. Harry Fegerstrom
P.O. Box 951
Kurtistown, HI 96760
3. Michael Cain, Custodian of Records
Office of Conservation and Coastal Lands
1151 Punchbowl, Room 131
Honolulu, Hawai'i 96813

Dated: October 7, 2016

_____/s/_____
Lanny Alan Sinkin