

Glen Kila
Dwight Vicente
Brannon Kamahana Kealoha
Cindy Freitas
William Freitas

In addition to the Requests, the following submissions were considered:

DOC.	TITLE	COUNSEL/PARTY
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	University of Hawaii at Hilo
146	TMT International Observatory, LLC’s opposition to Maelani Lee’s motion to intervene [Doc. 84]; COS	TMT International Observatory, LLC

On October 5, 2016, the University of Hawai`i at Hilo filed a Proposed Minute Order No. ___ Denying the Motion (“Proposed Minute Order”; Doc. 322).¹ Cindy Freitas submitted Objection to All Minute Order No. ___ That Was Filed In The Document Library On October 5, 2016 Doc 322, 321, 320, 319, 318, 317, 316, 315, 314, 312, 311, 310, 309 and 308, on October 7, 2016 (“C. Freitas Objection”; Doc. 332 and Doc. 333)².

Based upon the Motions, all related and oral submissions from counsels and/or parties, the Proposed Minute Order and all submissions related thereto, all applicable law, the entire record having been considered by the Hearing Officer,

¹ At the 5th pre-hearing conference, held on October 3, 2016, the Hearing Officer requested that prevailing parties submit proposed minute orders relative to motions for which oral rulings were rendered but written Minute Orders were still outstanding. Deadline for submission of the proposed minute orders was set for Wednesday, October 5, 2016, 4:30 p.m. Deadline for the submission of responses to the proposed minute orders was set for Friday, October 7, 2016, 4:30 p.m.

² It appears that C. Freitas filed two identical documents; Doc. No. 332 is file-stamped “2016 Oct 07 at 11:44 a.m.” and Doc. No. 333 is file-stamped “2016 Oct 07 at 3:39”.

IT IS HEREBY ORDERED that the Motion is DENIED. 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. At the hearing on August 5, 2016, 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.

This Hearing Officer finds that 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).

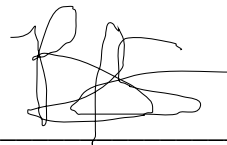
Ms. Freitas' objections to the Proposed Minute Order are based on her belief that "There for [sic] all **DOC 322, 321, 320, 319, 318, 318, 317, 316, 315, 314, 312, 311, 310, 309 AND 308** filed in the Document Library on October 5, 2016 is premature." Citing the "14th Amendment" Ms. Freitas contends that her rights are somehow denied by the Proposed Minute Order. Her arguments are illogical. The appropriate time to ask for reconsideration of the Minute Order in question is after it is filed. It has not been filed yet. The filing of this Minute Order will trigger the process for reconsideration as set out herein.

Motion to Reconsider. A party, who believes it appropriate, may file a motion to reconsider using the procedure set out herein. Any Motion for Reconsideration shall not be used to reargue the motion or set out positions of a purely repetitious nature or to present factual or legal grounds that could or should have been presented at the original hearing. AMFAC, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114 (1992).

The deadline for submission of any **motion** to reconsider this minute order and/or the Order Setting Issues, is no later than **5 business days** after the date this Minute Order are filed in the Documents Library. Any **responses to motions to reconsider**, shall be submitted no later than **10 business days** after this motion and order are filed in the Documents Library; essentially 5 business days after the deadline for motions to reconsider.

Any Motion to Reconsider shall be considered a non-hearing motion unless otherwise designated by the Hearing Officer.

DATED: Honolulu, Hawai'i, October 10, 2016.



Judge Riki May Amano (Ret.)
Hearing Officer

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

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

BLNR Contested Case HA-16-02
Document title:
Minute Orders 21, 22, 23, 24, 25, 26, 27

(CORRECTED) CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced Minute Orders were served upon the following parties by the means indicated on October 10, 2016:

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