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BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

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, Kahohe Mauka, Hamakua
District, Island of Hawaii, TMK (3) 4-4-
015:009

Case No. BLNR-CC-16-002

**TMT INTERNATIONAL
OBSERVATORY, LLC'S
MEMORANDUM IN OPPOSITION TO
KAMAHANA KEALOHA MOTION FOR
RECONSIDERATION ON DECISION
TO MOTION OF QUO WARRANTO
FILED OCTOBER 15, 2016; EXHIBIT
"1"; CERTIFICATE OF SERVICE**

**TMT INTERNATIONAL OBSERVATORY, LLC'S MEMORANDUM IN OPPOSITION
TO KAMAHANA KEALOHA MOTION FOR RECONSIDERATION ON DECISION TO
MOTION OF QUO WARRANTO FILED OCTOBER 15, 2016**

COMES NOW, TMT International Observatory, LLC ("TIO"), by and through its
counsel, Watanabe Ing LLP, and hereby submits this memorandum in opposition to Kamahana
Kealoha's ("Movant") Motion for Reconsideration on Decision to Motion of Quo Warranto filed
October 15, 2016 ("Motion for Reconsideration").

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DEPT. OF LAND &
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STATE OF HAWAII

I. DISCUSSION

Pursuant to Hawaii Administrative Rules (“HAR”) § 13-1-39(a), “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.” In this case, Movant has not shown either, and consequently, the Motion for Reconsideration should be denied.

A. Movant failed to present any “new information not previously available.”

In its Motion for Reconsideration, Movant argues that the Hearing Officer should reconsider the decision in Minute Order No. 30 [Doc. 353], which denied Movant’s Motion Invoking Quo Warranto, Respectfully, a Demand of Jurisdiction; Declaratory Judgment on a Constitutional Issue/Violation Resubmitted 8/8/2016 [Doc. 180] (“Motion”). However, Movant does not cite to any “new information not previously available that would affect the result.”

Instead, on page 2 of the Motion for Reconsideration, Movant restates its argument that “I am merely asking for proof of jurisdiction as provided by the US Constitution.” Those are the same arguments that Movant made on page 1 of its Motion when he stated, “I respectfully assert and request...that the honorable proceedings officer Amano provide absolute proof of her jurisdiction.” The Hearing Officer already reviewed and took into consideration these arguments when it issued Minute Order No. 30.

Furthermore, Movant’s citations to the Supremacy Clause and various cases do not present new information that was previously unavailable. The Supremacy Clause and the cases were in existence prior to Movant’s Motion and therefore could have been cited in the Motion. Moreover, those citations are simply not relevant to this contested case hearing.

Accordingly, the Motion for Reconsideration should be denied because Movant has failed to present any new information not previously available.

B. Movant failed to establish “substantial injustice.”

Movant similarly fails to establish that the Motion for Reconsideration should be granted due to “substantial injustice.” In fact, it is quite the opposite. There is no “substantial injustice” created by excluding issues that present non-justiciable political questions. Issues related to whether a Hawaiian Kingdom exists are sovereignty-related issues that are non-justiciable political questions, outside the subject matter jurisdiction of this proceeding. See Sai v. Clinton, 778 F. Supp. 2d 1, 6 (D.D.C. 2011) (noting that “federal courts have long recognized that the determination of sovereignty over a territory is fundamentally a political question beyond the jurisdiction of the courts” and so holding that the status of Hawaii as part of the United States is a political question). If Movant wishes to seek a venue elsewhere to challenge the legal status of the State of Hawaii, despite the declarations by the United States Supreme Court in Hawaii v. Office of Hawaiian Affairs, 556 U.S. 163 (2009) that Hawaii is a State, Movant may do so. However, this contested case hearing regarding a conservation district use permit for the TMT project is not the venue to do so. There simply is no subject matter jurisdiction over this political question. Accordingly, exclusion of the sovereignty-related issues does not in any way create substantial injustice, and Movant has not shown otherwise. Having failed to establish any “substantial injustice,” Movant’s Motion for Reconsideration must be denied.

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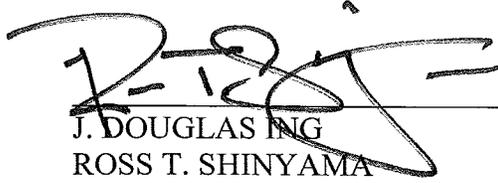
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II. CONCLUSION

For the foregoing reasons, and all reasons appearing of record, TIO respectfully requests that Movant's Motion for Reconsideration be denied.¹

DATED: Honolulu, Hawaii, October 19, 2016.

A handwritten signature in black ink, appearing to read 'J. Douglas Ing', is written over a horizontal line.

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¹ Should the Hearings Officer agree that the Motion for Reconsideration should be denied, TIO hereby respectfully submits for this Hearings Officer's consideration a proposed minute order denying the Motion for Reconsideration. See Exhibit "1" attached hereto.

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District, Island of Hawaii, TMK (3) 4-4-
015:009

Case No. BLNR-CC-16-002

PROPOSED MINUTE ORDER NO. _____
DENYING KAMAHANA KEALOHA
MOTION FOR RECONSIDERATION
ON DECISION TO MOTION OF QUO
WARRANTO FILED OCTOBER 15, 2016

PROPOSED MINUTE ORDER NO. _____ DENYING KAMAHANA KEALOHA MOTION
FOR RECONSIDERATION ON DECISION TO MOTION OF QUO WARRANTO
FILED OCTOBER 15, 2016

On October 15, 2016, Kamahana Kealoha (“Mr. Kealoha”) filed his Motion for Reconsideration on Decision to Motion of Quo Warranto (“Motion for Reconsideration”). The Motion for Reconsideration sought to have this Hearings Officer reconsider Minute Order No. 30 [Doc. 353], which denied Mr. Kealoha’s original Motion Invoking Quo Warranto, Respectfully, a Demand of Jurisdiction; Declaratory Judgment on a Constitutional Issue/Violation Resubmitted 8/8/2016 [Doc. 180]. TMT International Observatory, LLC filed its Memorandum in Opposition

EXHIBIT “1”

to the Motion for Reconsideration on October 19, 2016. Pursuant to Minute Order No. 30, the Motion for Reconsideration is a non-hearing motion.

This Hearings Officer having considered the Motion for Reconsideration, all other written and oral submissions of counsel and parties related thereto, the entire record, and for good cause shown,

IT IS HEREBY ORDERED that the Motion for Reconsideration is DENIED.

This Hearings Officer finds that Mr. Kealoha in the Motion for Reconsideration has not presented any new information not previously available that would affect the result of Minute Order No. 30. See Hawai'i Administrative Rules § 13-1-39(a). He also has not demonstrated that a substantial injustice would occur that warrants reconsideration of Minute Order No. 30. See id.

DATED: Honolulu, Hawaii, _____.

Judge Riki May Amano (Ret.)
Hearings 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'oho Mauka,
Hāmakua, Hawai'i, TMK (3) 4-4-015:009

BLNR Contested Case HA-16-002

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

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

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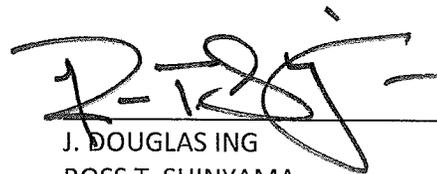
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DATED: Honolulu, Hawaii, _____ October 19, 2016



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