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

Case No. BLNR-CC-16-002

**TMT INTERNATIONAL
OBSERVATORY, LLC'S OPPOSITION
TO DWIGHT VICENTE'S MOTION
FOR STAY FINDING OF FACT
CONCLUSION OF LAW DATED MAY
28, 2017 [Doc. No. 658]; CERTIFICATE
OF SERVICE**

**TMT INTERNATIONAL OBSERVATORY, LLC'S
OPPOSITION TO DWIGHT VICENTE'S MOTION FOR STAY
FINDING OF FACT CONCLUION OF LAW DATED MAY 28, 2017 [Doc. No. 658]**

COMES NOW, TMT International Observatory, LLC ("TIO"), by and through its
counsel, Watanabe Ing LLP, and hereby submits this memorandum in opposition to Dwight
Vicente's Motion for Stay Finding of Fact Conclusion of Law dated May 28, 2017 [Doc. No.
658] ("Motion").

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STATE OF HAWAII

I. DISCUSSION

Mr. Vicente's Motion presents the same issues that have already been ruled upon numerous times in this proceeding. If Mr. Vicente were a licensed attorney, this type of conduct would clearly be sanctionable under Hawaii Rules of Civil Procedure ("HRCPP") Rule 11, which prohibits the filing of any pleading "for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." The continued filing of pleadings containing the same issues that have clearly been ruled upon in this proceeding is an abuse of process that needlessly requires the parties to expend time and resources on responding to requests that have been asked and answered.

Inasmuch as Mr. Vicente repeats arguments and requests the same remedies that have already been ruled upon, his Motion is essentially a motion for reconsideration of Minute Order No. 19. Pursuant to Minute Order No. 19, all motions for reconsideration were required to have been filed "no later than 3 business days after the date this motion and order are filed in the Documents Library," and the reconsideration "shall not be used to reargue the motion or set out positions of a purely repetitious nature...." It is indisputable that Mr. Vicente's Motion is untimely, as it was not filed within the time limits set forth in Minute Order No. 19. Accordingly, the Motion should be denied on this basis alone.¹

Even if considered at this untimely date, Mr. Vicente's Motion fails to satisfy the requirements of Hawaii Administrative Rules ("HAR") § 13-1-39(a), which provides that "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, Mr. Vicente has not shown either, and consequently, the Motion and

¹ Certain parties did file motions for reconsideration of Minute Order No. 19. Those motions were denied. See Minute Order No. 54 [Doc. No. 656].

Mr. Vicente's request for a stay and/or for this Hearing Officer to reconsider Minute Order No. 19 should be denied.

A. Vicente failed to present any "new information not previously available."

In his Motion, Mr. Vicente argues that Minute Order No. 19 improperly excludes certain issues from being addressed in the above-entitled contested case hearing, namely, issues regarding the sovereignty of the Kingdom of Hawaii, challenges to the legal status of the State of Hawaii, and challenges to the State's ownership of and title to lands. However, Mr. Vicente does not cite to any "new information not previously available that would affect the result."

Instead, in the Motion, Mr. Vicente restates arguments that have been made by himself and numerous other parties to this proceeding that "the lands today remain to be Crown and Government Lands, political question over these lands remains with this Kingdom." Those are essentially the same arguments on page 7 of the Temple of Lono Opposition to Puelo Motion to Set the Issues filed July 20, 2016 [Doc. No. 119], when it stated that "the competing claims to the land in question" were "relevant and material to this case" and requesting the Hearing Officer to find that the Hawaiian "Kingdom still exists, whether recognized by the United States or not." Indeed, those arguments are exactly the same arguments Mr. Vicente made in his Objection of ("PUEO")'s motion to set the issue, dated August 19, 2016 [Doc. No. 222]. Those arguments were already reviewed when Minute Order No. 19 was issued. There are no new arguments asserted by the Motion that were not already considered. Accordingly, the Motion should be denied.

B. Vicente failed to establish "substantial injustice."

Mr. Vicente similarly fails to establish that the Motion 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). Indeed, at least three times, on pages 1, 2, and 3 of the Motion, Mr. Vicente appears to admit that the question of sovereignty is a “political question.”

If Mr. Vicente 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, he 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, and that issue has been comprehensively reviewed and settled in this proceeding. Accordingly, exclusion of the sovereignty-related issues does not in any way create substantial injustice or involve due process violations, and Mr. Vicente has not shown otherwise. Having failed to establish any “substantial injustice,” the Motion must be denied.

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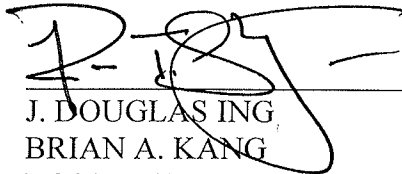
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II. CONCLUSION

For the foregoing reasons, and all reasons appearing of record, TIO respectfully requests that the Motion be denied.

DATED: Honolulu, Hawaii, June 2, 2017.

A handwritten signature in black ink, appearing to be "J. Douglas Ing", written over a horizontal line.

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CERTIFICATE OF SERVICE

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

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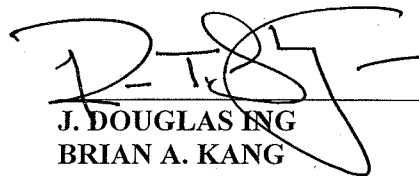
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DATED: Honolulu, Hawaii, June 2, 2017



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