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`ohe Mauka, Hamakua, Hawai`i TMK (3) 4-4-015:009	)	CASE NO. BLNR-CC-16-002 KAMAHANA KEALOHA: RESPONSE TO TMT INTERNATIONAL OBSERVATORY, LLC'S OPPOSITION TO MOTION INVOKING QUO WARRANTO, RESPECTFULLY, A DEMAND OF JURISDICTION; DECLARATORY JUDGMENT ON A CONSTITUTIONAL ISSUE/VIOLATION RESUBMITTED 8/8/2016

Name of Party: Brannon Kamahana Kealoha

DATED: 8/10/2016

(signature of Party or Lawyer)

KAMAHANA KEALOHA: RESPONSE TO TMT INTERNATIONAL OBSERVATORY, LLC'S OPPOSITION TO MOTION INVOKING QUO WARRANTO, RESPECTFULLY, A DEMAND OF JURISDICTION; DECLARATORY JUDGMEN ON A CONSTITUTIONAL ISSUE/VIOLATION RESUBMITTED 8/8/2016

I am Kamahana Kealoha party to this hearing and I am submitting this response as a courtesy to the hearing's officer and in genuine good-will to the process as best as I can understand it with no resources, very little format, and basically no direction from the BLNR, Presiding Officer, the Attorney Generals or any of the representatives of this processes and I would like to state again as in prior attempts at engaging this interface and apparatus called contest case hearing, and make this apparent in pleading for guidance and direction as well as more time to properly and knowledgeably engage this process, that this is being done with my limited understanding to the disparaging and subjugating advantage of the professional lawyers opposing and manipulating a process that I am told I need no lawyer for. I would implore the Attorney General and Deputy Attorney Generals step in and be responsible and serve due-diligence, and in effect constitutionally protected due process, to insure that the process, forms, and all details would be made known or knowledge be accessible to the public in some way or form, yet it is not. If not these individuals and administrators of the hearing, then we should be directed to the source of this user-friendly knowledge repository, a book, a video, or even just implore you to point their fingers in the direction I need to head or a website I need to go to. I want to state and clearly assert, without any misunderstanding from anyone here, that I am being coerced and being made to participate under clear duress of what I consider the disparagingly purposeful, blatant and unethical demeanor of the hearing administrators including the Attorney General's office and its deputies as well as what I see as presiding officer Amano's intimidation of silence in clear demonstration and evidence of confusion from the majority of parties. I however speak specifically for myself. I object to this so-called user-friendly process, called a

contested case hearing, and the illusion of the term “user-friendly for the public” and want to point out in this response that this fraudulent terminology precluded pro-bono legal assistance from certain entities that otherwise would have assisted in this obvious disadvantaging situation in this so-called user-friendly process I am told does not require a lawyer. This is absolutely not the case as resources are not made available and guidance of those that are required to uphold justice under the law of the government in power, namely the law of the so-called State of Hawaii and the United States. That being said much of what I will be communicating here will again be submitted as separate motions as the demeanor of this council evidenced by its aggressive speeding up of the process, non-accommodating, outrageously sped-up schedule, no consultation for or consideration for future mandatory pre-hearing dates, no consideration with less than 7 days notice for flight prices, no consideration for work schedules nor the near 400 miles round-trip some vested and recognized parties, like myself, have to travel, and absolutely no resources or guidance from anyone in this process at any time since we’ve been frantically trying to engage according to this, in reality, extremely non-user friendly process. Scheduling is aggressively in favor of the parties here that have the most money as is the extortionate cost of transcripts. Nearly $800 for one day is not user friendly for anyone but the party with 1.4 billion dollars behind them. The Presiding Officer Amano claims to be accommodating no one. Yet the claim does not match the reality. If no one is being accommodated reasonably at all I contend this hearing is in violation of ethics and laws that I should not have to point out HOWEVER just because the Presiding Officer states that no one is being accommodated does not mean no one is being accommodated. In the speeding up of the process, the complete lack of genuine user-friendly resources to find anything out about this process, the demeanor of the hearing administrators including the Presiding Officer and the Attorney General’s office and its

representatives, and because of the extortionate costs not only of the transcripts but the purposeful scheduling of upcoming hearing dates with less than one weeks notice driving up costs of airfare and threatening the jobs of those who must request off in advance of more than 7 days, Presiding Officer Amano is blatantly, publicly, and clearly handing the advantage of these hearings to the entities who vie for only one outcome: the re-permitting of the TMT initiative. It is blatant. How can anyone disagree with the points I've made here regarding the timeline and the costs associated with such a timeline. If there is no pre-meditated timeline and no one is being accommodated than why is due-process and my right to engage this system knowledgeably being deprived? That being said here is my responses to TIO's opposition to my motion of Quo Warranto.

1) To TIO's first claim that "The Motion is not properly before the Hearings Officer" I have a few points to make:

If this were the user friendly process with guidance or resources made available to make it one then I would not perhaps have made this particular motion HOWEVER as was stated by presiding officer Amano in the motion brought up in the last pre-hearing regarding the change of name of the applicant, just because it is not written does not mean that it can't be done. And I want to invoke that same justification here as precedent of this very hearing should be consistent and no double standard should be used to apply to parties. TMI does not justify in their opposing statement that the order "must" be issued in the name of the State by a circuit court. Neither does the law cited therein state that the order "must" be obtained by petition addressed to a circuit court. As applied in the judgment against the move to invalidate the application due to the change of name and entity of the applicant, I ask that the justification that was used, namely that

because “must” and “required” are not written that it must also not mean that it can’t be done and I plead that the hearing officer is compelled to fairly apply the same justification here, or reverse the decision against the motion to invalidate the application process immediately and end this charade. As the Supreme Court stated and I paraphrase here, in the remanding of the permit, the exact reason we are here, to be just something must be seen as just and it is not just to cite that just because it is not written doesn’t mean it can’t be done for one motion and not apply it to all, specifically this motion.

If the motion is not the right motion and there is another appropriate motion I reserve the right to access this so-called user-friendly process and have it be that user friendly process by being able to amend my motion in which I had no resources, guidance, or due-process for myself to submit properly.

2) In response to TIO’s claim that “The Hearings Officer clearly has the authority to preside overt this contested case hearing.”

I first of all strongly emphasize again, as apparently my motion was not understood or is being misconstrued purposely similarly as I stated in my original motion here in regards the case of Maelani’s motion being coerced and prodded into a jurisdiction issue when it was distinctly and clearly a meets and bounds issue, I object to the mis-appropriation of my motion here to demand jurisdiction. I am not invoking any request for lawfulness of the so-called State of Hawaii. I have noticed the demeanor and practice of this court is to relegate many issues that do not necessarily approach that issue, which has been declared as invalid in this case. I am absolutely not, and have not stated that I am challenging the lawfulness of the Sate of Hawaii in

this motion and I refuse to allow this hearing and its administrators and applicant for the permit and their supporters to coax and coerce me into saying I am making a motion that I am not. This motion as is clearly states it demands jurisdiction. That does not exclusively apply, nor did I explicitly state it applies to the "lawfulness" of the origins of the so-called State of Hawaii. Jurisdiction does not only apply to sovereign entities and I know that these manipulative administrators and applicants know that, so let me be very clear: as a forced American citizen I am invoking my constitutionally protected rights and no other jurisdiction. I demand my constitutional rights be upheld according to the government in power, America's, law and that of their accomplice, the government in power called the State of Hawaii. Forced or now, whether I personally believe so or not I am an American citizen in this situation, I believe by force, and I demand my constitutional rights as such. I am not invoking anywhere in my request that the so-called State of Hawaii is not lawful. I acknowledge that it enforces its laws absolutely. Let me be absolutely clear. I am asking for your proof of jurisdiction among other American entities. Without an inventory of the lands that this project intends to build on, its survey of borders and size, and without a delegation of these lands by the property owning entity to the BLNR and subsequently to this hearing and the authority of presiding officer Amano, there is no proof that these lands are part of any assumed "ceded" lands repository. These are standard procedures for most any entity claiming ownership of property, an inventory of the so-called ceded lands containing the specific land and parcel the TIO is sub-leasing from UH and leased from the BLNR for UH to sub-lease, a survey of these lands also containing the specific land and parcel the TIO is sub-leasing from UH who in turn leases said lands from the BLNR for UH to sub-lease, and an official delegation of authority to this convening hearing and its presiding officer containing the specific land and parcel the TIO is sub-leasing from UH who in turn leases said

lands from the BLNR for UH to sub-lease. It's a standard request really I am asking for and if the Constitutional Demand for proof of Jurisdiction is not the right law to invoke for that tell me what is. And if there is not law I am happy to amend my motion immediately, as TMT Corp changed from TIO, and as it is not written that I cannot I would invoke the same justification for the simple act of changing the motion title to a motion for whatever it is that this is, I suggest maybe "A motion respectfully demanding proof of exact borders and land mass inventoried, surveyed and delegation of authority to this hearing of the exact lands in questions, namely inclusive of the TMT's intended site on Mauna Kea." That should not be difficult if the title to the so-called ceded lands is indeed unclouded, which I am surprised is seemingly being used as a legal term. I am not familiar with legal terms but "clouded" was not in the dictionary of legal terms. How is that justifiable, the use of the term? What does it mean exactly? Where is the definition and the justification, or reference and citations for the definition?

TIO's second point on this same topic regards the apology resolution and appropriates again my clear motion of simple authority, as is, under the current government enforcing its law in Hawaii. I again am not making such an assertion of Hawaiian Kingdom rights whatsoever here, so let me restate again I am invoking my American rights and laws whether I'm forced to be American or not. I interpret myself as the former, forced to be American. Regardless my rights are protected as such and this blatant mis-characterization of my motion and the fact that the hearing officials allow this to happen time and again as TIO continues to generalize our motions and us a group inaccurately and with such blatant prejudice that I wonder if the administrators and presiding officer are also culpable for any time of violations by allowing this to occur time and again. Again, this motion does not ask for redress to the Hawaiian Kingdom or anything Hawaiian in this sense. I believe continuing to allow the characterization of myself and

many of us here is a further violation of my American constitutional rights, as a citizen by force or not, because generalization of a group of people is usually associated with racism and at the very least plain prejudice. I would like that addressed here as well. Call it "a motion to strike prejudice language and demeanor from all hearings and motions." And I am asserting that here but will copy and past to a separate motion as requested, if the hearing officer prefers to drag out the process even though some are still submitting multiple motions in one notice and have multiple times in the past. I am going on and on because I am not sure of the process but want to get everything possible in, and we can thank the evident fraud of a so-called "user friendly" process for that.

In order for Hearing's Officer Amano to hold these hearings the Board of Land and Natural Resources must have jurisdiction over these lands. Moreover, you have the burden of proving that these lands are within your authority. Your authority is certain lands within the territory of the government in power called the State of Hawaii. Below you will find proof from this so-called State's Constitution, the Act claiming to Admit Hawaii as a State in 1959, and the Organic Act of 1900 demonstrating that the Island of Hawaii, and in particular the exact area where the Thirty Meter Telescope project intends to build is not within the so-called State of Hawaii.

In the same precedent used by TIO in its opposition, the so-called State of Hawaii v Kaulia, 128 Hawai'i 479 (2014), the so-called State's Supreme Court held that the criminal jurisdiction of the so-called State of Hawaii consists of "all areas within the territorial boundaries of the State of Hawaii". The so-called Hawaii Supreme Court stated:

> "Pursuant to HRS § 701–106 (1993), [12] "the State's criminal jurisdiction

> encompasses all areas within the territorial boundaries of the State of Hawai‘i.” State v. Jim, 105 Hawai‘i 319, 330, 97 P.3d 395, 406 (App.2004). The State charged Kaulia based on his conduct in Kona, County and State of Hawai‘i. Thus Kaulia is subject to the State’s criminal jurisdiction in this case”.

In this same topic and its opposition to this motion TIO applies its assumption to a case decision, which is just that pure assumption. TIO states that “it is clear that the state owns the lands atop Mauna Kea” erroneously without the inventory and survey evidenced. Where is the evidence for this assumption? The court case quoted gives no inventory or survey. None at all. Therefore TIO’s assumption and reason for opposition is not germane to the question whatsoever and I contend it must be struck from the record or denied or invalidated, by the hearing officer. And in exact opposition to TIO’s assessment that based on this foregoing, non germane statements and citations, it is clear that the hearings officer has not shown that she was delegated authority to preside ovet these hearings from any parcel that is delineated as being the exact lands the TMT project intends to build on having no inventory or survey containing the specific land and parcel the TIO is sub-leasing from UH who in turn leases said lands from the BLNR for UH to sub-lease.

Furthermore the official territorial boundaries of the so-called State of Hawaii are found in Article XV of the so-called State Constitution and Section 2 of the so-called Act of Admission. Neither law names the Island of “Hawaii” as within the territorial boundaries of this so-called State of Hawaii:

Article XV. Constitution of the so-called State of Hawaii: State Boundaries

> The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial and archipelagic waters, included in the Territory of Hawaii on the date of enactment of this Act, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters, but said State shall not be deemed to include Johnston Island, Sand Island (offshore from Johnston Island) or Kingman Reef, together with their appurtenant reefs and territorial waters.

Section Two: So-called Act of Admission, State of Hawaii 73 Stat 4

> The State of Hawaii shall consist of all the islands (together with their appurtenant reefs and territorial waters) now included in the Territory of Hawaii, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters, but said State shall not be deemed to include Johnston Island, Sand Island (offshore from Johnston Island) or Kingman Reef, together with their appurtenant reefs and territorial waters.

In order to prove that the Island of "Hawaii" is within this so-called State of Hawaii you must prove that the Island of Hawaii is included in the so-called "Territory of Hawaii," Thus, you must look to Section 2 of the Organic Act to determine whether the island of Hawaii is within the so-called Territory of Hawaii. The Organic Act states in its Section Two that only the islands acquired by the Joint Resolution … annexing the Hawaiian Islands," are within the so-called Territory of Hawaii;

> §2. Territory of Hawaii. That the islands acquired by the United States of America under an Act of Congress entitled "Joint resolution to provide for annexing the Hawaiian Islands to the United States," approved July seventh, eighteen hundred and ninety-eight, shall be known as the Territory of Hawaii.

The Joint Resolution did not acquire any of the Hawaiian Islands; it had no power to acquire the territory of a foreign sovereign nation such as the Kingdom of Hawaii, but let me be clear that this is not about a sovereign issue but about a simple issue of authority, under United States Law, and can be remedied with an inventory and survey that include the exact land here in question, the Thirty Meter Telescopes projected construction site, specifically that particular portion of land located on the summit of Mauna Kea that is at issue here in this contested case hearing, and a clear conveyance of these lands and its borders and sum of acreage to the BLNR with a delegation of that specific property and its borders and conveyed title delegated to the authority of this hearing and its presiding officer. This suggested remedy must include the inventory and survey that include lands here in question and not just repeat the incongruent terms of "ceded" and "Resolution" as evidence for possession as property as stated in the initial motion to call something "ceded" means there was a cessation. For a cessation to take place there must be a treaty of cessation. No such treaty of cessation exists and a Joint Resolution does not substitute as a treaty and cannot be used fraudulently as a treaty of cessation. If the Joint Resolution had acquired the land in question, then the Kingdom of Hawaii could, by an act of its own legislature acquire the United States.

The Joint Resolution did not acquire the island of "Hawaii." Thus, the island of Hawaii is not within the so-called State of Hawaii.

3) **Most disparagingly TIO states in its third issue that "The Motion raises non-justiciable political questions that are outside of the subject matter jurisdiction of the Hearings Officer.**

I think I will refer to the above regarding this as I am not asking for any sovereign or Hawaiian Kingdom, nor international law be invoked. I am simply asking for the so-called ceded lands inventory, the land survey of I am simply asking to assert my right to due-process and or Quo Warranto, as possible given the precedent set by the prior decision regarding the change of name and entity of the applicant, and I am paraphrasing, that if it is not written does not mean it can't be done. And I would implore the presiding officer to apply the same precedent she set with that decision here and allow the Quo Warranto. If not I am amending my application for a motion to "**a motion to strike prejudice language and demeanor from all hearings and motions**" and hope and implore that the same standard and precedent set and invoked to allow TIO to take over this application from the separate and distinctly original entity, can be invoked as precedent to do so here or I would suggest a double standard exists that again benefits and accommodates one outcome, the re-permitting of the TIO.

The parties and administrators of this hearing claiming that this is a "sovereignty" issue or a "Hawaiian Kingdom" issue greatly, and maybe purposely are trying to relegate all questions and motions regarding the authority of the BLNR, this hearing, and therefore the legal authority and responsibility of Presiding Officer Amano's role in this hearing. Having no legal authority,

no inventory of the so-called ceded lands, no survey of these so-called ceded lands and therefore no title conveyance of these ceded lands it is my responsibility to alert all who support this hearing lacking those basic necessities as well as a delegation of authority from the inventory, survey and title owner, allegedly the BLNR, THAT you may be in sever breach of law in several jurisdictions including under the law currently enforced by the so-called State of Hawaii and the United States of America. According to the government in power's State Constitution and the laws of the United States that claim to have admitted Hawaii as a State- you are bound to follow these laws.

Without a inventory of these so-called ceded lands, without a survey of the said land intended for the TMT project, you have no authority over Mauna Kea-- as it is outside of the State of Hawaii and outside the authority of the BLNR. The solution is simple. No matter what the motion is called, as I am definitely not being given access to a user friendly system I want to be very clear, I am making a motion demanding respectfully an inventory of the so-called ceded lands containing the specific land and parcel the TIO is sub-leasing from UH and leased from the BLNR for UH to sub-lease, a survey of these lands also containing the specific land and parcel the TIO is sub-leasing from UH who in turn leases said lands from the BLNR for UH to sub-lease, and an official delegation of authority to this convening hearing and its presiding officer containing the specific land and parcel the TIO is sub-leasing from UH who in turn leases said lands from the BLNR for UH to sub-lease.

Hawaii law, under section 202(b) of the Hawaii Revised Statutes must take judicial notice of Sections 2 of the Organic Act and the so-called Act of Admission. Such is mandatory.

This hearing has no discretion. The BLNR and this hearing, and its presiding officer Amano, must follow the clear and plain meaning of those laws of the United States.

The burden is on the entity asserting possession of these lands and the applicant to prove the existence of authority and one way that is possible is by providing an inventory of the so-called ceded lands containing the specific land and parcel the TIO is sub-leasing from UH and leased from the BLNR for UH to sub-lease, a survey of these lands also containing the specific land and parcel the TIO is sub-leasing from UH who in turn leases said lands from the BLNR for UH to sub-lease, and an official delegation of authority to this convening hearing and its presiding officer containing the specific land and parcel the TIO is sub-leasing from UH who in turn leases said lands from the BLNR for UH to sub-lease. This is state law and law of the United States. See C.A.B. v. Island Airlines, 352 F.2d 735, 741 (9th Cir. 1965) [". . . the burden of proof is thus logically an emphatically placed upon the claimant state."]. Agents or officers acting outside of their jurisdiction are possibly liable for legal ramifications, and it is my due diligence to let you know and be on the record as informing you of this. As passionate as the discourse can be I want to give all my aloha and good will to all the parties here and to all the administrators and to the presiding officer. I must believe that the benefit of the doubt of honor and justice rest with you. In my passion I am only speaking towards the objectified situation we are in regarding this re-permitting application.

Despite the direct and unconscionable harm this process, permitting request, and administration of this process is causing many others and myself directly, I submit this with the greatest aloha and hope for justice. In particular I would like to express aloha for hearing officer Amano and my hopes that this issue will be served all justice it is due.

If any mistakes regarding this statement or my participation and submissions to this so-called user friendly process are made, I request that I be allowed to rectify or amend them being that although this process is called “user friendly” there is no public resource, website, manual or guidance available that has been made known to me or any of the other parties whom I have approached according to them. The coercion of silence, lack of guidance, pre-set statements of facilitating a schedule of deadlines and prior deliberations, not only suggest a pre-set outcome but evidence the known disingenuous use of the term “user friendly” for the BLNR’s Conservation District Use Application and Contested Court Case process. For any “user friendly” process resources and guidance should be available, yet here it is not. I appreciate any guidance and leeway to modify any interactions with this process and apologize ahead of time for whomever, individual or entity, that may have an agenda or schedule inconvenienced as we engage in what is proclaimed as- at least on paper- a “user friendly” system under seeming law.

Because of cultural mores that maintain privacy in genealogical and burial matters, in this motion and submission I reserve any and all rights known and unknown, in particular the right to clarify any and all statements made herein with official documentation under a variety of cultural standards, and the right to submit in the future any and all evidence and witnesses in the future that may be lacking presently or in the future requested, required and or pertinent, as a living, direct, lineal descendant, among many, to our living iwi, remains, burials and entire burial grounds and lands situated on these non-ceded, Hawaiian Kingdom Crown and Government lands held under possible fraud of treaty, or otherwise, and internal house resolution, or otherwise,- the sacred, and protected summit of Mauna Kea. ALOHA.