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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 SUBSTANTIVE
JOINDER IN PERPETUATING UNIQUE
EDUCATIONAL OPPORTUNITIES,
INC.'S MOTION TO SET THE ISSUES
[DOC. 99]; CERTIFICATE OF SERVICE**

**TMT INTERNATIONAL OBSERVATORY, LLC'S SUBSTANTIVE JOINDER IN
PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES,
INC.'S MOTION TO SET THE ISSUES [DOC. 99]**

TMT International Observatory, LLC ("TIO"), by and through its undersigned counsel, hereby substantively joins in Perpetuating Unique Educational Opportunities, Inc.'s Motion to Set the Issues [Doc. 99] ("Motion"). The Motion should be granted because Perpetuating Unique Educational Opportunities, Inc.'s ("PUEO") request that this Hearings Officer set the relevant issues for the upcoming contested case hearing is not only supported, but required, by

applicable Hawai'i statutes and administrative rules. There is also an obvious need to set the relevant issues for the upcoming contested case hearing to ensure that irrelevant issues do not disrupt the orderly conduct and disposition of the hearing. TIO respectfully requests that this Hearings Officer grant PUEO's request in the Motion and set the relevant issues for the upcoming contested case hearing.

I. DISCUSSION

1. The applicable Hawai'i statutes and administrative rules require this Hearings Officer to set the relevant issues for the upcoming contested case hearing.

The upcoming contested case hearing is governed by Chapter 91 of the Hawai'i Revised Statutes ("HRS") and Subchapter 5, entitled "Contested Case Proceedings[,] of Title 13, Chapter 1 of the Hawai'i Administrative Rules ("HAR"). See HAR § 13-1-32(a). HRS § 91-9(a) provides that prior to the contested case hearing all parties shall receive notice of said hearing, which shall include, *inter alia*, a statement of "[t]he particular sections of the statutes and rules involved." HRS § 91-9(b)(3). The notice shall also include:

[a]n explicit statement in plain language of the issues involved and the facts alleged by the agency in support thereof; provided that if the agency is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon allocation a bill of particulars shall be furnished.

HRS § 91-9(b)(4) (emphasis added)

HAR § 13-1-36(a) similarly provides:

The presiding officer may hold or cause to be held pre-hearing conferences with the parties **for the purpose of formulating or simplifying the issues**, written testimony, setting of schedules, exchanging names of witnesses, limitation of number of witnesses, and such other matters as may expedite the orderly conduct and disposition of the proceedings as permitted by law.

Id. (emphasis added).

Based on the foregoing, PUEO's request in the Motion that this Hearings Officer set the relevant issues for the upcoming contested case hearing is not only supported, but required, by applicable Hawai'i statutes and administrative rules. TIO respectfully requests that this Hearings Officer grant PUEO's request in the Motion and set the relevant issues for the upcoming contested case hearing.

2. **There is an obvious need to set the relevant issues for the upcoming contested case hearing to ensure that irrelevant issues do not disrupt the orderly conduct and disposition of the hearing.**

HAR § 13-1-36(a) expressly authorizes this Hearings Officer to “formulat[e] and simplify[] the issues . . . [to] expedite the orderly conduct and disposition of the proceedings as permitted by law.” Id. The obvious need to set the issues to ensure the orderly conduct and disposition of the upcoming contested case hearing is clearly demonstrated by the number of motions that have been filed on sovereignty-related issues. Though TIO does not discount that these issues are important to the individuals that have filed motions on the subject, sovereignty-related issues are not relevant to the upcoming contested case hearing and present non-justiciable political questions that are outside the subject matter jurisdiction of this Hearings Officer. See e.g., Sai v. Clinton, 778 F.Supp.2d 1, 6 (D.D.C. 2011), aff'd sub nom. Sai v. Obama, No. 11-5142, 2011 WL 4917030 (D.C. Cir. Sept. 26, 2011) (holding that it has “long [been] recognized that the determination of sovereignty over a territory is fundamentally a political question beyond the jurisdiction of the courts”).¹ This Hearings Officer should not permit such irrelevant

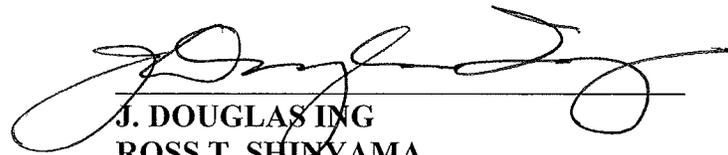
¹ TIO also incorporates by this specific reference its Response to the Kingdom of Hawaii's Notice of Absence of Necessary and Indispensable Parties, which is being filed concurrently herewith.

issues that are outside of her subject matter jurisdiction² to be presented at the upcoming contested case hearing as it would clearly disrupt the orderly conduct and disposition of the hearing. TIO respectfully requests that this Hearings Officer grant PUEO's request in the Motion and set the relevant issues for the upcoming contested case hearing.³

II. CONCLUSION

Based on the foregoing, and upon further argument to be presented at the hearing of the Motion, TIO respectfully requests that this Hearings Officer grant PUEO's request in the Motion and set the relevant issues for the upcoming contested case hearing.

DATED: Honolulu, Hawaii, August 1, 2016.



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² See also HAR § 13-1-29.1 (providing that the Board “may deny a request or petition or both for a contested case **when it is clear as a matter of law that the request concerns a subject that is not within the adjudicatory jurisdiction of the board**”) (emphasis added).

³ Through its purported officer Lanny Sinkin, The Temple of Lono (“ToL”) filed an opposition and argued, *inter alia*, that the Motion is an improper attempt to reopen the motions to intervene, which have already been decided by the Hearings Officer. The ToL argues that the Hearings Officer in deciding the motions did not impose any conditions or restrictions on the issues an intervenor could raise. This argument is specious. This Hearings Officer granted parties, including the ToL, status as an intervenor because she found that they would substantially assist her in her decision-making on issues relevant to the upcoming contested case hearing. Indeed, it is specious to argue that this Hearings Officer granted parties intervenor status to raise issues that are irrelevant to the upcoming contested case hearing and outside of her subject matter jurisdiction. Moreover, this Hearings Officer granted the ToL intervenor status based on its Motion to Intervene [Doc. 50]. Notably, however, ToL's Motion to Intervene does not discuss or even mention sovereignty or the Kingdom of Hawai'i. ToL therefore did not seek through its Motion to Intervene to present issues relating to sovereignty or the Kingdom of Hawai'i. Instead, the push to insert irrelevant sovereignty issues into the upcoming contested case hearing is seemingly being made by Mr. Sinkin, who purportedly also represents the non-party and non-existent Kingdom of Hawai'i. Mr. Sinkin should not be permitted to raise arguments of the purported Kingdom of Hawai'i under the guise of ToL.

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

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

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DATED: Honolulu, Hawaii, August 1, 2016.

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

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