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Attorneys for PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.

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 Hawai'i, TMK (3) 4-4-
015:009

Case No. BLNR-CC-16-002

**PERPETUATING UNIQUE
EDUCATIONAL OPPORTUNITIES,
INC.'S MEMORANDUM IN
OPPOSITION TO MEHANA KIHOI'S
MOTION TO DENY THE
INTERVENTION OF PERPETUATING
UNIQUE EDUCATIONAL
OPPORTUNITIES AS A PARTY TO THE
CONTESTED CASE HEARING;
CERTIFICATE OF SERVICE**

**PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.'S
MEMORANDUM IN OPPOSITION TO MEHANA KIHOI'S MOTION TO DENY THE
INTERVENTION OF PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES
AS A PARTY TO THE CONTESTED CASE HEARING**

COMES NOW PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.
("PUEO"), by and through its undersigned counsel, and hereby respectfully submits the
following Memorandum in Opposition to MEHANA KIHOI'S (hereinafter "Kihoi") Motion to
Deny the Intervention of Perpetuating Unique Educational Opportunities as a Party to the

Contested Case Hearing.

I. BACKGROUND

PUEO is a Hawai`i non-profit corporation formed by Native Hawai`ians and organized under Hawai`i Revised Statutes Chapter 414D. PUEO was formed: (a) to share the interaction of Hawai`ian culture and science; (b) to research and educate the public on the interaction of Hawai`ian culture and science and to inspire exploration; and (c) to further educational opportunities for the children of Hawai`i in the fields of science, technology, engineering and mathematics.

PUEO's board members and beneficiaries include native Hawai`ians that reside in the Keaukaha-Pane`ewa Hawai`ian Homestead located in Hilo, Hawai`i. PUEO's board members also include native Hawai`ians who seek knowledge and exercise customary and traditional native Hawai`ian rights on Mauna Kea.

In supporting the pursuit of educational opportunities for children of Hawai`i, PUEO supports the building of the Thirty Meter Telescope atop Mauna Kea, as it will greatly enhance the educational opportunities for our children. As stated above, PUEO was formed to, inter alia, share the interaction of Hawai`ian culture and science and to research and educate the public on the interaction of Hawai`ian culture and science and to inspire exploration. More importantly, PUEO's purposes include furthering "educational opportunities for the children of Hawai`i in the fields of science, technology, engineering and mathematics.

On June 17, 2016, PUEO sought admission as a party to the contested case hearing. After a hearing (where any party could timely file opposition), PUEO was admitted as a party, and the Hearing Officer found that "PUEO's participation will substantially assist the Hearing Officer in her decision making." Minute Order No. 13 at page 4.

Kihoi now seeks to have PUEO effectively dismissed as a party. Although Kihoi styles her motion as one to “deny the intervention” of PUEO into this case, it is more appropriately a motion for reconsideration of the Hearing Officer’s earlier decision to admit PUEO as a party. For the reasons stated in this Memorandum, Kihoi’s motion/request should be DENIED.

II. LEGAL STANDARD

Hawaii Administrative Rule (hereinafter “HAR”) Section 13-1-39 governs “reconsideration” in contested case hearings. That section provides as follows:

Reconsideration. (a) Upon a motion of a party, 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.
- (b) In either case, a motion for reconsideration shall be made not later than five business days after the decision or not less than fourteen days prior to any deadline established by law for the disposition of the subject matter, whichever is earlier.

III. ARGUMENT

A. Kihoi’s motion is untimely.

Kihoi filed her Motion with the Board on July 18, 2016, 31 days after the Hearing Officer ruled favorably on PUEO’s request to intervene as a party. The hearing on all pre-hearing motions was set for August 5, 2016. Applying HAR Section 13-1-39, Kihoi should have filed her motion no later than June 22, 2016. This was not done. As a consequence, Kihoi’s motion is untimely, and should be DENIED.

B. **Kihoi offers no new information that was previously unavailable, and cannot establish that a substantial injustice would occur if PUEO is admitted as a party.**

Assuming the Hearing Officer nonetheless considers the merits of Kihoi’s claims despite the fatal untimeliness of her Motion, Kihoi cannot demonstrate that she offers “new information not previously available (that) would affect the result” of the Hearing Officer’s decision. She

essentially argues that PUEO should not be granted intervention because:

- (1) They incorrectly use their Native Hawaiian ancestry and customary and traditional practices to advance an educational purpose that does protect or preserve Traditional and Customary rights (“T&C rights”)
- (2) They fail to demonstrate how they will be directly and immediately affected or how their interest will suffer harm, and
- (3) Their claims, in the alternative, are adequately represented by UHH.

Kihoi Motion at page 9.

As is evident from her very pleading, Kihoi attempts to recapitulate earlier arguments made unsuccessfully against the admission of PUEO as a witness by offering no new evidence. What is further disturbing to PUEO is the statement that “they (PUEO) incorrectly use their Native Hawaiian ancestry and customary and traditional practices to advance an educational purpose that does not protect or preserve Traditional and Customary rights.” PUEO’s members do not “use” their Native Hawaiian ancestry. They are Native Hawaiians who believe that all parties (Kihoi included) have a right to be heard, but no one party should corner an exclusive market on what the Native Hawaiian opinion on the TMT telescope is.

IV. CONCLUSION

DATED: Hilo, Hawai‘i, August 1, 2016.



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CERTIFICATE OF SERVICE

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I hereby certify that a copy of the foregoing was served on the following via the manner

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