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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Attorney for Petitioners

MAUNA KEA ANAINA HOU and KEALOHA
PISCIOTTA; CLARENCE KUKAUAKAHI CHING;
FLORES-CASE OHANA; DEBORAH J. WARD;
PAUL K. NEVES; and KAHEA: THE HAWAIIAN
ENVIRONMENTAL ALLIANCE, a domestic non-profit
Corporation

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
) MAUNA KEA ANAINA HOU, ET.
A Contested Case Hearing Re) AL. PETITIONERS' POSITION
Conservation District Use Permit) STATEMENT ON PERPETUATING
(CDUP) HA-3568 for the Thirty Meter) UNIQUE EDUCATIONAL
Telescope at the Mauna Kea Science) OPPORTUNITIES, INC.'S MOTION TO
Reserve, Kaohe Mauka, Hamakua) SET THE ISSUES, DATED JULY 18,
District, Island of Hawaii,) 2016; and CERTIFICATE OF
TMK (3) 4-4-015:009) SERVICE
)
_____)

MAUNA KEA ANAINA HOU, ET AL. PETITIONERS' POSITION STATEMENT ON
PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.'S MOTION TO
SET THE ISSUES, DATED JULY 18, 2016

Petitioners MAUNA KEA ANAINA HOU and KEALOHA PISCIOTTA, CLARENCE
KUKAUAKAHI CHING, FLORES-CASE OHANA, DEBORAH J. WARD, PAUL K.
NEVES, and KAHEA: THE HAWAIIAN ENVIRONMENTAL ALLIANCE, a domestic
non-profit corporation (also referred to herein collectively as "Mauna Kea Anaina Hou,
Et Al." or "Petitioners"), by and through their counsel undersigned, and hereby submit

their position statement on P.U.E.O., Inc.'s Motion to Set the Issues, Dated July 18, 2016.

The Petitioners submit that while all of the criteria that is set forth in H.A.R. § 13-5-30(c) must be met in order for a CDUP to be approved, there are also issues of customary and traditional practices that must be considered under Ka Pa'akai and under other authorities, including the State constitution and statutes, and decisional law, there are also issues under International Law as well as under the U.N. Declaration on the Rights of Indigenous Peoples, that are also pertinent for consideration with the proposed use of public lands and the proposed suppression of cultural and traditional practices and desecration of sacred land, and a number of other issues, including but not limited to, environmental studies, comprehensive management plans, and other issues. Whether these issues are determined through evidentiary hearings prior to the contested case hearings or during the hearings themselves, parties should have a right to present and fair opportunity to be heard on what may be relevant or not relevant, material or not material, to the instant proceedings. P.U.E.O., Inc., in citing H.A.R. § 13-5-30(c) in its Motion, omits a critical part of the rule, i.e. that "**[t]he applicant shall have the burden of demonstrating that a proposed land use is consistent tithe above criteria.**"

Hearings, similar to HRE Rule 104 hearings, may be required, as well as through further briefing.

Petitioners also raise and incorporate their earlier objections regarding the deadlines set forth for the naming of witnesses by the Petitioners when the University of Hawaii at Hilo has the burden in the instant proceedings, TMT International Observatory, LLC is aligned with UH Hilo, as is the P.U.E.O., Inc. Petitioners should have a fair opportunity to respond to those named witnesses by naming witnesses who may also provide counter-arguments and evidence that contradicts that being presented by UH Hilo and those parties aligned with it. Otherwise, the Petitioners respectfully submit that it is a "trial by ambush" and a violation of due process. The Petitioners also respectfully object, once again, to the refusal to allow for discovery in this matter, a matter that is of significant importance as well as substantial complexity.

With respect to the witnesses named by TMT International Observatory, LLC., the Petitioners once again raise and reassert their objections filed through their Memorandum in Opposition to TMT's Motion to Have TMT International Observatory, LLC Admitted as a Party in the contested Case Hearing, filed on June 13, 2016; and Petitioners' Memorandum in Opposition to Perpetuating Unique Educational Opportunities, Inc.'s Motion to Intervene, dated May 16, 2016, filed on June 13, 2016; and the arguments made by the Petitioners on the hearing date, and object to such testimony as to relevancy and materiality in these proceedings. TMT International and its agents and representatives are neither relevant, nor material to these proceedings and neither is P.U.E.O., Inc. and its representatives as discussed in the previous opposition, as well. P.U.E.O., Inc. and its representatives have no injury in fact with respect to the proposed development, they have no standing, and their proposed testimony and evidence is neither relevant, nor material to these proceedings, to the CDUP criteria, or to any other issue in these proceedings.

Respectfully submitted.

DATED: Honolulu, Hawaii, August 1, 2016.



RICHARD NAWIEHA WURDEMAN

Attorney for Petitioners

MAUNA KEA ANAINA HOU and KEALOHA
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Telescope at the Mauna Kea Science)
Reserve, Kaohe Mauka, Hamakua)
District, Island of Hawaii,)
TMK (3) 4-4-015:009)
_____)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below, a true and correct copy of the foregoing document was served on the following parties by the means indicated:

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DATED: Honolulu, Hawaii, August 1, 2016.



RICHARD NAIWIEHA WURDEMAN