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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-
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OFFICE OF CONSERVATION
AND COASTAL LANDS

2016 AUG 22 A 11: 50

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Case No. BLNR-CC-16-002

**TMT INTERNATIONAL
OBSERVATORY, LLC'S
OPPOSITION TO MEHANA KIHAI'S
MOTION FOR RECONSIDERATION
TO DENY THE INTERVENTION OF
PERPETUATING UNIQUE
EDUCATIONAL OPPORTUNITIES
AS A PARTY TO THE CONTESTED
CASE HEARING [DOC. 209];
DECLARATION OF J. DOUGLAS ING;
EXHIBIT "1"; CERTIFICATE OF
SERVICE**

**TMT INTERNATIONAL OBSERVATORY, LLC'S
OPPOSITION TO MEHANA KIHOI'S MOTION FOR
RECONSIDERATION TO DENY THE INTERVENTION OF
PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES
AS A PARTY TO THE CONTESTED CASE HEARING [DOC. 209]**

TMT International Observatory, LLC (“TIO”), by and through its undersigned counsel, hereby submits its Opposition to Mehana Kihoi’s Motion for Reconsideration to Deny the Intervention of Perpetuating Unique Educational Opportunities as a Party in the Contested Case Hearing [Doc. 209] (the “Motion”).

I. DISCUSSION

1. This Motion and All Future Motions for Reconsideration Should be Treated as Non-Hearing Motions.

The administrative rule governing motions, HAR § 13-1-34, does not require that all motions be set for hearing. In fact, the plain language of this rule clearly indicates that in some instances, a hearing will not be held. HAR § 13-1-34(c) simply states that the “failure to appear at a hearing on the motion, **if held**, shall be deemed a waiver of objection to the granting or denial of the motion.” Based on the foregoing, and in the interest of conducting an orderly and efficient proceeding,¹ the Hearing Officer is not required to hold a hearing on all motions, and should decide this Motion and all future motions for reconsideration as non-hearing motions.

Deciding this Motion and all future motions for reconsideration on the written submissions as non-hearing motions does not deprive any party of the opportunity to present the

¹ The administrative rules governing contested case proceedings specifically authorize the Hearing Officer to establish procedures necessary for an orderly and efficient hearing. Under HAR § 13-1-32(c), “the [hearing officer] shall have the power **to . . . rule on objections or motions**, fix times for submitting documents, briefs, **and dispose of other matters that normally and properly arise in the course of a hearing authorized by law that are necessary for the orderly and just conduct of a hearing.**”). In addition, under HAR § 13-1-36(a), the Hearing Officer is further authorized to hold pre-hearing conferences “for the purpose of formulating or simplifying the issues, . . . **and such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.**”

basis for their motion.² Notably, all motions for reconsideration are treated as non-hearing motions, under Rule 7.2 of the Rules of the Circuit Courts of the State of Hawaii (“RCCH”), which requires that such motions “**shall be decided on written submissions**, unless otherwise ordered by the courts.”³ This general rule is consistent with the limited purpose of such motions, which is only “to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion.” Ass’n of Apartment Owners of Wailea Elua v. Wailea Resort Co., Ltd., 100 Hawai‘i 97, 110, 58 P.3d 608, 621 (2002) (citation omitted).

Based on the foregoing, this Motion and all future motions for reconsideration should be treated as non-hearing motions.

2. The Motion Should be Denied Because it is Premature.

The Motion should be denied as premature because it seeks reconsideration of an order that does not yet exist. Ostensibly, Ms. Kihoi seeks reconsideration of the Hearing Officer’s oral ruling on August 5, 2016 denying Ms. Kihoi’s Motion to Deny the Intervention of PUEO as a Party [Doc. 98] (the “Motion to Deny PUEO’s Intervention”). However, this oral ruling has not been reduced to a written order upon which reconsideration may be granted under HAR § 13-1-39. On this basis, the Motion should be denied as premature.

² HAR § 13-1-34(a) sets forth the requirements for motions, which “shall state the relief sought, and shall be accompanied by an affidavit, or declaration, or memorandum setting forth the grounds upon which they are based. The [Hearing Officer] shall set the time for filing all motions and opposing memoranda, if any.” All parties to the instant contested case are required to follow the applicable rules governing this proceeding, including that they state the grounds upon which they seek relief in their written motion accompanied by all supporting documents.

³ Although the Rules of Practice and Procedure, HAR Title 13, Chapter 1 have not adopted the RCCH, RCCH Rule 7.2 is offered as persuasive authority.

3. **The Motion Should be Denied Because it Fails to Establish that Reconsideration is Warranted.**

i. **The Motion repeats the same arguments raised in the Motion to Deny PUEO's Intervention and at the August 5, 2026 Motions Hearing.**

“Reconsideration is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding.” Sousaris v. Miller, 92 Hawaii 505, 513, 993 P.2d 539, 547 (2000) (internal brackets and citations omitted). Ironically, Ms. Kihoi’s Motion begins by reciting the standard governing motions for reconsideration, and then proceeds to repeat the same information and arguments raised in her Motion to Deny PUEO’s Intervention and again at the Motions Hearing on August 5, 2016. Simply stated, the Motion does exactly that what it is **not** supposed to do – attempt to relitigate old matters.

Ms. Kihoi raised the following arguments in her Motion to Deny PUEO’s Intervention:

- a. PUEO is not entitled to mandatory intervention under HAR § 13-1-31(b)(2) because it cannot demonstrate an injury in fact, *i.e.*, their interest in “enhancing educational opportunities” by the construction of the TMT is not a constitutionally protected right and is not clearly distinguishable from that of the interest of the University of Hawaii at Hilo (“UHH”) or the general public;
- b. PUEO is not entitled to permissive intervention under HAR §13-1-31(c) because it does not have a substantial interest in the case and, if it did, such interest is adequately represented in the contested case by the UHH; and
- c. PUEO should not be allowed intervention because (1) its board members Patrick Leo Kahawaiola’a and Richard Ha, Jr. participated in and supported community outreach efforts for the TMT Project, (2) its board member Shadd Keahi Warfield (“Warfield”) is also the President of Keaukaha One Youth Development (“KOYD”), a non-profit organization, and (i) KOYD received a \$15,000 STEM grant administered by the Hawaii Community Foundation, and funded by nine organizations, one of which is TIO, and (ii) Board Member Stanley Roehrig (“Member Roehrig”) was a *former* director of KOYD.

Thereafter, Ms. Kihoi argued in further support of her Motion to Deny PUEO's Intervention at the August 5, 2016 Motions Hearing. Repeating the arguments in her motion, Ms. Kihoi testified:

So according to HAR 13-1-31(2) I strongly believe a substantial injustice would occur if my motion is denied on these grounds. I do not believe that PUEO should be granted mandatory intervention because they're trying to use status as cultural practitioners when the construction of TMT does not protect or preserve customary and traditional rights.

Secondly, I do not believe that PUEO should be granted permissive intervention because their claim to enhance educational opportunity is adequately represented by UH-H and TIO. Their position will not add any new relevant information, HAR 13-1-31(c)(1). They do not have a substantial interest in the matter.

....

Third, they did not state that any injury or results would apply if they were not granted into this case. . . .

My fourth reason, I have strong, strong concern of the conflict of interest that is happening between BLNR and the Board members and the founding members of PUEO. Stanley Roehrig, Board member of the BLNR, has strong connections to Keahi Warfield who is a member of PUEO.

A true and correct copy of an excerpt from the transcript of the Motions Hearing held on August 5, 2016 is attached hereto as Exhibit "1" to the Declaration of J. Douglas Ing.

Despite the fact that Ms. Kihoi is clearly aware of the standard for reconsideration, even a cursory review of the arguments in the instant Motion results in the distinct sense of déjà vu ... all over again.⁴ Upon closer inspection, the arguments presented by Ms. Kihoi in her Motion to Deny PUEO's Intervention, at the August 5, 2016 Motions Hearing, and the instant Motion are

⁴ Even construed liberally as a *pro se* pleading, the Motion fails to meet the standard for reconsideration under HAR § 13-1-39. See French v. Wal-Mart Stores, Inc., CV 13-00499 DKW-KSC, 2014 WL 3739913, at * 2 (D. Haw. July 29, 2014) ("Although the Court recognizes that Plaintiff is proceeding *pro se*, her *pro se* status does not excuse compliance with all applicable rules."); Christian v. Frank, CV 04-00743 DAE-LEK, 2011 WL 801966, at *1 (D. Haw. Feb. 10, 2011) (same); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) ("Pro se litigants must follow the same rules of procedure that govern other litigants."); Pinnacle Credit Servs., LLC v. Kuzniak, 2009 WL 581709 (Ct. App. Ohio 2009) ("Courts should not afford litigants special treatment simply because they are proceeding without the benefit of counsel.").

in fact the same. These arguments have been addressed and fully briefed in TIO's Opposition to the Motion to Deny PUEO's Intervention [Doc. 145] (the "Opposition") and by TIO's counsel at the August 5, 2016 Motions Hearing, which arguments are incorporated herein by reference.

a. **The Motion fails to establish the existence of a conflict of interest that warrants termination of PUEO's status as a party.**

As best as can be understood, the Motion argues that a conflict of interests exists for the same reasons stated in the Motion to Deny PUEO's Intervention,⁵ and because Member Roehrig has failed to disclose his "business interest" in KOYD as required under Section 171-4(d) of the Hawaii Revised Statutes ("HRS"). As alleged in the Motion, Member Roehrig's private law practice and KOYD share office space. In order for a lawyer to share office space with a non-lawyer, the Motion argues that the parties must have an agreement in place regarding their respective portions of the shared space, and through such agreement, Member Roehrig has a "business interest" in KOYD. The Motion argues that Member Roehrig's failure to disclose this "business interest" pursuant to HRS § 171-4(d) creates a conflict of interest.

The plain language of HRS § 171-4(d) requires board members (1) to disclose and file with the Board a list of all transactions with the DLNR in which the member has a "direct interest," and (2) to disclose all transactions with the DLNR involving any corporation, association, partnership, or joint venture in which the member is an officer, partner, or employee. As alleged in the Motion, Member Roehrig's office sharing arrangement involves his private law practice and KOYD only – there is no "transaction" with the DLNR. The Motion fails to

⁵ The Motion alleges that KOYD was founded by Member Roehrig's wife, and again, that Member Roehrig was a *former* director of KOYD. As such, Member Roehrig has "ties" to Warfield who is the President of KOYD and PUEO. This argument fails to establish a conflict of interest that somehow warrants the termination of PUEO's status as a party.

establish that disclosure of the alleged office space sharing arrangement between Member Roehrig's office and KOYD was required.

Although the Motion relies on Formal Opinion Nos. 18 and 22 by the ODC for the proposition that the office space sharing arrangement creates a conflict, such reliance is misplaced. According to Formal Opinion Nos. 18 and 22 by the ODC attached as Exhibit 4 of the Motion, "[t]he situation whereby a law firm shares space with a nonlawyer, in itself is not improper. It becomes improper only if the nonlawyer solicits clients for the attorney or consistently recommends the attorney to handle the nonlawyer's client's legal problems." The Motion does not allege that KOYD solicits clients for Member Roehrig, in his capacity as an attorney, or consistently recommends Member Roehrig to handle KOYD's client's legal problems. As such, the Motion fails to establish that the alleged office space sharing arrangement is in itself improper or creates a conflict of interest.

Similarly, the Motion's reliance upon United States v. Mississippi Valley Generating Co., 364 U.S. 520, 81 S. Ct. 294, 5 L. Ed. 2d 268 (1961) is also misplaced. The three-part conflict of interest standard set forth in Mississippi Valley Generating Co. is based upon the elements of a federal conflict of interest statute, 18 U.S.C. § 434 (repealed Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126). As an initial matter, the federal conflict of statute, 18 U.S.C. § 434 has been repealed. In addition, the statute applied only to federal government employees. Member Roehrig is not a federal government employee. As such, the three-part conflict of interest test articulated by in Mississippi Valley Generating Co. is inapposite here.

b. PUEO has established that it is entitled to intervention

As set forth in the Opposition. PUEO demonstrated that it is entitled to intervention under HAR §§ 13-1-31(b)(2) and/or 13-1-31(c) through the declarations of several of its native

Hawaiian members attesting to their exercise of customary and traditional rights on Mauna Kea. The Motion fails to raise any new arguments to rebut PUEO's showing that it is entitled to be a party. In fact, the Motion admits that it already raised the arguments regarding PUEO being adequately represented in the case. See Motion at 8 ("On the other hand, TIO defended PUEO, which supports our **original** argument that PUEO is being adequately represented in the present case.") (emphasis added).


ii. **Ms. Kihoi's untimely recitation of her basis for standing is inapposite to the admission of PUEO as a proper party.**

The Motion explains, for the first time, that Ms. Kihoi has "direct ancestral ties to Mauna Kea" and that her "ancestors practiced gathering rights on Mauna Kea for hundreds of years." Motion at 9. None of the factual allegations concerning Ms. Kihoi's basis for standing as a party were included in her Letter Request to be Party in the Contested Case Proceeding [Doc. 23]. In any event, as stated in the Opposition, TIO is not challenging Ms. Kihoi's admission as a party at this time. Finally, Ms. Kihoi's alleged basis for standing as a party to the instant contested case proceeding has no bearing on PUEO's basis for standing as a party.

II. **CONCLUSION**

Based on the foregoing, and upon further argument to be presented at the hearing of the Motion, **if any**, the Motion should be denied.

DATED: Honolulu, Hawaii, August 22, 2016.


J. DOUGLAS ING
ROSS T. SHINYAMA
SUMMER H. KAIWE
Attorneys for
TMT INTERNATIONAL
OBSERVATORY, LLC

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF

Case No. BLNR-CC-16-002

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

**DECLARATION OF J. DOUGLAS ING;
EXHIBIT "1"**

DECLARATION OF J. DOUGLAS ING

I, J. DOUGLAS ING, hereby declare and state as follows:

1. I am an attorney licensed to practice law in the State of Hawaii and am one of the attorneys representing TMT International Observatory LLC, a non-profit organization.
2. I make this Declaration based upon my personal knowledge and upon reliance of the files and records maintained by my office and in the normal and regular course of business, and am competent to testify as to all statements herein.
3. Attached hereto as Exhibit "1" is a true and correct copy of an excerpt from the transcript of the Motions Hearing held on August 5, 2016 in the above-captioned contested case proceeding. The attached excerpt relates to the Motion to Deny the Intervention of Perpetuating Opportunities as a Party to the Contested Case Hearing [Doc. 98] filed by Ms. Mehana Kihoi.

I, J. DOUGLAS ING, declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawaii, August 22, 2016.


J. DOUGLAS ING

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BOARD OF LAND AND NATURAL RESOURCES

STATE OF Hawai'i

IN THE MATTER OF) CASE NO. BLNR-CC-002
)
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)
-----)

MOTIONS HEARING

Held on August 5, 2016, commencing at 10:05 a.m. at
the YMCA Building, 300 West Lanikaula Street, Hilo,
Hawai'i 96720.

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JUDGE RIKI MAY AMANO, Hearing Officer

3 JULIE CHINA, Deputy Attorney General
4 WILLIAM WYNHOFF, Deputy Attorney General

5 STEPHEN MICHAEL CAIN, Staff Planner

6 TIM LUI-KWON, ESQ.

7 JOHN P. MANAUT, ESQ.

8 IAN L. SANDISON, ESQ.

9 Attorneys for University of Hawai'i

10 RICHARD N. WURDEMAN, ESQ.

11 Attorney for Mauna Kea Anaina Hou, et al

12 DOUGLAS ING, ESQ.

13 ROSS SHINYAMA, ESQ.

14 Attorneys For TMT International Observatory

15 LINCOLN S.T. ASHIDA, ESQ.

16 NEWTON CHU, ESQ.

17 For PUEO

18 LANNY SINKIN

19 Temple of Lono

20 HARRY FERGERSTROM

21 RICHARD DeLEON

22 MEHANA KIHAI

23 C.M. KAHO'OKAHI KANUHA

24 JOSEPH KUALII LINDSEY CAMARA

25 JENNIFER LEINA'ALA SLEIGHTHOLM

MAELANI LEE

STEPHANIE-MALIA TABBADA

TIFFNIE KAKALIA

GLEN KILA

DWIGHT J. VICENTE

BRANNON KAMAHANA KEALOHA

CINDY FREITAS

WILLIAM K. FREITAS

22

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1 responsibilities, breach of contract, et cetera,
2 mandated by the law of the land, I'm denying the
3 motion. There's no basis for the motion in this
4 proceeding.

5 Document No. 98, that's Kihoi motion to
6 deny the intervention of Perpetuating Unique
7 Educational Opportunities as a party to the contested
8 case hearing. Opposition was filed by TIO at 145 and
9 PUEO at 155.

10 MS. KIHUI: Before I defend my motion, I
11 just want to say to members of PUEO that I meant no
12 disrespect at all when I wrote this, and I prayed for
13 all of you while I was on the summit yesterday
14 because I will not let this process divide our
15 community and our people.

16 I respectfully ask for you to not declare
17 my motion as untimely. Forgive me, I am a pro se
18 individual and I'm still trying to understand the
19 deadline and timing of all of these things.

20 So as the record will show, according to
21 the Hearing Officer, we were instructed to file our
22 witness list and all prehearing motions. And for my
23 interpretation I understood that that meant any and
24 all motion whether it was regarding the intervention
25 of another party, so whether it was argued that I was

1 given the opportunity on that day of June 17th when
2 we had our second meeting, I had just entered on that
3 day. So I'm not too sure when I would have been
4 given the opportunity to file this motion. So the
5 timeliness, please forgive me.

6 HEARING OFFICER AMANO: Before you
7 continue, your motion was filed timely as far as I'm
8 concerned.

9 MS. KIHUI: Okay, mahalo.

10 Moving on, I am a pro se individual, trying
11 my very best to assert my rights. And I'm a
12 full-time working mother. I live in Kona. And I'm
13 really trying to do my best to understand this.

14 So according to HAR 13-1-31(2) I strongly
15 believe a substantial injustice would occur if my
16 motion is denied on these grounds. I do not believe
17 that PUEO should be granted mandatory intervention
18 because they're trying to use status as cultural
19 practitioners when the construction of TMT does not
20 protect or preserve customary and traditional rights.

21 Secondly, I do not believe that PUEO should
22 be granted permissive intervention because their
23 claim to enhance educational opportunity is
24 adequately represented by UH-H and TIO. Their
25 position will not add any new relevant information,

1 HAR 13-1-31(c)(1). They do not have a substantial
2 interest in the matter.

3 The Board may approve such request if they
4 find that the requester's participation will
5 substantially inform the Board in decision-making.
6 The Board may deny any request of the party if it
7 feels that that position of the requester is
8 substantially the same as the position of a party
9 already admitted to the proceeding.

10 And two, that admission of additional
11 parties will not add substantially new relevant
12 information. It will make the proceeding inefficient
13 and unmanageable and not assist the Board in making a
14 decision.

15 PUEO's interests are already being asserted
16 by UH-H and TIO.

17 Third, they did not state that any injury
18 or results would apply if they were not granted into
19 this case. There was an argument whether -- I
20 believe there was an argument whether I had been
21 showing any injury. I am experiencing great injury,
22 Your Honor, deep psychological trauma, which is more
23 painful than any physical injury than I've ever
24 experienced, being pulled apart while I'm standing in
25 front of my child with my ohana on the summit.

1 It's a place I go for healing. As a
2 domestic violence victim this place that I go to for
3 healing turned into a place of violence. And so I
4 just would like to say that I am experiencing injury.
5 And it's a psychological trauma which is the reason
6 why I'm here today.

7 My fourth reason, I have strong, strong
8 concern of the conflict of interest that is happening
9 between BLNR and the Board members and the founding
10 members of PUEO. Stanley Roehrig, Board member of
11 the BLNR, has strong connections to Keahi Warfield
12 who is a member of PUEO. They both share the same
13 business address, 101 Aupuni Street, Suite 124, and
14 there is no dispute on whether or not there are two
15 separate businesses. It's the suite number and I've
16 seen it for myself.

17 And I believe that Keahi Warfield is a
18 beneficiary of the TMT Think Foundation. I strongly
19 question the relationship between the Board member
20 and Stanley Roehrig and Keahi Warfield.

21 So with all due respect, Your Honor, this
22 is the motion and I feel that I stand by everything
23 that I presented.

24 HEARING OFFICER AMANO: Could you explain
25 to me. So Warfield is a member of the Board for

1 PUEO, is that what you're saying?

2 MS. KIHUI: (Nods head up and down.)

3 HEARING OFFICER AMANO: Also Mr. Roehrig is
4 a member of the Board of Land and Natural Resources,
5 therefore PUEO should be disqualified from
6 participation?

7 MS. KIHUI: Yes.

8 HEARING OFFICER AMANO: Okay.

9 MS. KIHUI: And I believe --

10 HEARING OFFICER AMANO: Hold a second. Let
11 me give you back the mike.

12 MS. KIHUI: And I also believe that Stanley
13 Roehrig should disqualify -- Stanley should recuse
14 himself from participating in the decision.

15 Also I want to say Keahi Warfield was a
16 beneficiary of the TMT funded Think Program, with the
17 Keoka (phonetic) One Development Program.

18 Nothing further.

19 HEARING OFFICER AMANO: Thank you.

20 TIO opposition 145.

21 MR. ING: Douglas Ing appearing on behalf
22 of TIO.

23 Judge, this motion should be denied because
24 PUEO is a proper party. Their motion was supported
25 by declarations of several Native Hawaiian members

1 attesting to the exercise of customary and
2 traditional practices on Mauna Kea. Contrast to the
3 statements of PUEO, Ms. Kihoi's request to intervene
4 simply states in a very conclusionary fashion that
5 she practices worship on Mauna Kea, but does not
6 specify what those practices are.

7 So her motion to intervene does not meet
8 her own standards, number one.

9 Number two, PUEO is entitled to permissive
10 intervention. There is not any other party in this
11 proceeding that has a voice as unique as PUEO's.
12 They are cultural practitioners. They speak with a
13 very unique voice that's different from other
14 cultural practitioners who are parties, and on that
15 basis alone they are not representative by any other
16 parties to this proceeding and they should be heard
17 on these issues as a party. Thank you.

18 HEARING OFFICER AMANO: PUEO Document 155.

19 MR. ASHIDA: Good afternoon, Your Honor,
20 Lincoln Ashida representing PUEO.

21 Your Honor, I have nothing substantively
22 additional to add to our response that was filed. As
23 a matter of procedure we contend that this is mostly
24 or should be considered a motion for reconsideration
25 under the rules if that rule does apply to motions

1 such as this.

2 I don't believe that she's presented any
3 new evidence that is not already out there in the
4 public domain. PUEO has taken great effort in this
5 case to be as inclusive as possible. We've been very
6 selective in motions that we've joined and most
7 notably motions we have not joined.

8 Our position has always been that everybody
9 has a place at the table. Everybody should have an
10 opportunity to have voices heard. I wasn't planning
11 to come up here to voice any objection to Mr. Kihoi's
12 timeliness of filing of the motion, that's not what
13 PUEO is about. It's about everybody having the right
14 and opportunity to be heard, present competent
15 evidence before you, and you make the decision, you
16 make the right decision.

17 So that being said, I do have to defend
18 PUEO because of the motion that was filed. I thank
19 Ms. Kihoi for her sentiments that she expressed
20 regarding no disrespect to PUEO. And PUEO's intent
21 here is not to divide the community but to unite it,
22 make sure everybody has a voice. Whatever decision
23 is made, that that decision is pono, everyone can
24 live with that decision.

25 So I have nothing further, other than ask

1 answer if there are any questions that Your Honor has
2 regarding substance of the motion.

3 HEARING OFFICER AMANO: No.

4 MR. ASHIDA: Thank you.

5 HEARING OFFICER AMANO: For Ms. Kihoi, I
6 make a good point. At the time we dealt with motions
7 for intervention she was not a party able to take a
8 position on whether or not PUEO or anybody else would
9 be allowed to intervene.

10 I do want to make it clear in the order as
11 well as my verbal order that I found -- I granted the
12 motion to intervene for PUEO because it was a
13 discretionary decision, under the rules, and I felt
14 that PUEO'S participation would assist me in learning
15 about the issues and making the right decisions.

16 And so that is the basis that I allowed
17 PUEO in. Until I saw Ms. Kihoi's other allegations
18 about the parties, I had no knowledge of that stuff,
19 but I don't see that as a basis to disqualify the
20 organization as a whole from being a party.

21 So I'm going to stand by my decision and
22 respectfully deny the motion.

23 Mr. Kanaele's motion to exclude, which is
24 Document No. 178. And I'm not sure yet if there were
25 any oppositions filed, so I'm handing the microphone

BOARD OF LAND AND NATURAL RESOURCES
FOR THE STATE OF HAWAI'I

IN THE MATTER OF

Case No. BLNR-CC-16-002

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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

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

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