TMT INTERNATIONAL OBSERVATORY, LLC'S REQUEST FOR BOARD TO ACT UPON DENIAL OF INTERVENTION PURSUANT TO HAR § 13-1-31(G)

COMES NOW, TMT International Observatory, LLC ("TIO"), by and through its counsel, Watanabe Ing LLP, and hereby submits this request seeking that the Board of Land and Natural Resources ("BLNR" or "Board") take action pursuant to Hawaii Administrative Rules ("HAR") § 13-1-31(g) upon the denial of intervention issued in Minute Order No. 13 on July 21, 2016.
I. DISCUSSION

Pursuant to HAR § 13-1-31, a person who has a property interest or shows a substantial interest in the matter may request to be admitted as a party in the contested case. The hearing to determine a person’s admission may be conducted by the Board itself, or an appointed hearings officer. Under HAR § 13-1-31(g),

If the hearing to determine parties to the contested case was not conducted by the board, and the person who conducted such hearing recommends that any agency or person requesting to be a party should not be allowed to participate in the contested case, such recommendation and the reasons therefor shall be immediately submitted to the board in writing. The requestor whose request is recommended for denial shall have the opportunity to file objections to the recommendation. Such recommendation shall be acted upon by the board as soon as practicable and shall be decided, by written order, not later than the commencement of the contested case hearing.

In this case, numerous individuals and entities sought admission as parties in the above-entitled contested case. On June 17, 2016, a hearing was held before the appointed Hearings Officer. On July 21, 2016, in Minute Order No. 13 [Doc-115], the Hearings Officer admitted several parties and denied approximately 11 requests for admission based upon failure to appear at the hearing and failure to prosecute. These individuals were given until August 1, 2016 to file a motion for reconsideration. Upon information and belief, none of the individuals filed a motion for reconsideration by August 1, 2016. Accordingly, Minute Order No. 13 serves as the denial of their requests to be admitted as parties in this proceeding. Pursuant to HAR § 13-1-31(g), because the initial determination was made by the Hearings Officer, the Board is now required to review the denial of intervention and reasons therefor (as set forth in Minute

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1 See Exhibit “1” to the Declaration of Ross T. Shinyama.
Order No. 13), and to issue a written order on said intervention as soon as practicable, but by no later than the commencement of the contested case hearing.

II. CONCLUSION

For the foregoing reasons, and all reasons appearing of record, TIO respectfully requests that the Board take action pursuant to Hawaii Administrative Rules ("HAR") § 13-1-31(g) to affirm the denial of intervention issued in Minute Order No. 13 by the appointed Hearings Officer.

DATED: Honolulu, Hawaii, August 26, 2016.

[Signature]
J. DOUGLAS ING
ROSS T. SHINYAMA
SUMMER H. KAIAWE
Attorneys for
TMT INTERNATIONAL OBSERVATORY, LLC
COMES NOW, JMF INTERNATIONAL OBSERVATORY, LLC ("JIO"), by and through its
COUNSEL, WALNABE ING. LLP, and hereby submits this request seeking that the Board of Land and
Natural Resources, pursuant to Hawaii Administrative Rules, take action pursuant to Hawaii Revised
Statutes, Chapter 13-1, to vacate Order No. 13 on July 21,

"HAR" § 13-1-3(3) upon the denial of intervention issued in Minute Order No. 13 upon the denial of
intervention pursuant to Hawaii Administrative Rules.

CERTIFICATE OF SERVICE

SHINNAMA, EXHIBIT "1", 13-1-3(6) DECLARATION OF ROSS L. ROYSTER, JIO.

CERTIFICATE OF SERVICE

SHINNAMA, EXHIBIT "1", 13-1-3(6) DECLARATION OF ROSS L. ROYSTER, JIO.

CERTIFICATE OF SERVICE

SHINNAMA, EXHIBIT "1", 13-1-3(6) DECLARATION OF ROSS L. ROYSTER, JIO.

CERTIFICATE OF SERVICE

SHINNAMA, EXHIBIT "1", 13-1-3(6) DECLARATION OF ROSS L. ROYSTER, JIO.

IN THE MATTER OF

FOR THE STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

JMF INTERNATIONAL OBSERVATORY, LLC

Attorneys for

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Residence No.: (808) 544-8399

Telephone No.: (808) 544-8300

Honolulu, Hawaii 96813

899 Bishop Street, 23rd Floor

First Hawaiian Center

STEWART H. KANAVE

ROSS L. SHINNAMA

T. DOUGLAS ING

A Limited Liability Law Partnership

WALNABE ING. LLP
See Exhibit "1" to the Declaration of Ross T. Shyma.

now required to review the denial of intervention and reasons therefor (as set forth in paragraph 13-1-31(3)(a)), because the initial determination was made by the Hearings Officer, the Board is

at the denial or their request to be admitted as parties in this proceeding. Pursuant to HAR § 13-1-31(3), a person who has a property interest or shows a

Hearings Officer. On July 21, 2016, in Minute Order No. 13 [Doc-115], the Hearings Officer

Hearings Officer. On June 17, 2016, a hearing was held before the Applicant

In this case, numerous individuals and entities sought admission as parties in the

Hearings Officer. Under HAR § 13-1-31(3), a hearing to determine a person's admission may be conducted by the Board itself, or an appointed

DISCUSSION
DATED: Honolulu, Hawai‘i, August 26, 2016.

Heard by:

31(3) To affirm the denial of intervention issued in Minute Order No. 13 by the appointed Hearing Officer.

31(3) To affirm the denial of intervention issued in Minute Order No. 13 by the appointed Hearing Officer.

For the foregoing reasons, and all reasons appearing of record, IT IS RESPECTFULLY

CONCLUDING

NOTE: After the commencement of the contested case hearing, the party that obtained a written order on said intervention as soon as practicable, but by no

Order No. 13), and to issue a written order on said intervention as soon as practicable, but by no
DATED: Honolulu, Hawaii, August 26, 2016.

I, ROSS T. SHINYAMA, declare under penalty of law that the foregoing is true and correct.

1. ROSS T. SHINYAMA, declare under penalty of law that the foregoing is true and correct.

Exhibit "I," attached hereto is a true and correct copy of Minute Order No. 13

3. I, ROSS T. SHINYAMA, hereby declare and state as follows:

DECLARATION OF ROSS T. SHINYAMA

SHINYAMA: EXHIBIT "I"

DECLARATION OF ROSS T.

Case No. BLNR-CC-16-002

IN THE MATTER OF FOR THE STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES
EXHIBIT "A"

However, their request was withdrawn prior to the hearing on June 17, 2016.

The following persons were present in furtherance of their filed motion, application:

Bs9. For the University of Hawaii, C. Hilo ("UH-Hilo").

Piscators and Public Case: and Timothy L. Kwan, Esq.; lan Sandison, Esq.; and John P. Wamer.

Maua Ana Ho' o, for and with Clarence Kukanakahi Chin, Departm. of Water, Kealoha

A B G. C. Present at the hearing for the existing parties were Richard N. Wunderman, Esq.

in the above-captioned matter, was held in Hilo, Hawaii at 75 Aupuni Street, Conference Room

multiple motions, applications and/or requests for admission of intervention as a party or parties

hearing on admission of intervention as a party; Second Pre-Hearing Conference

MINUTE ORDER NO. 13

Certificate of Service

Pre-Hearing Conference

Hearing on Intervention as a Party; Second

Hearing on Admission of

Pre-Hearing Conference

Certificate No. 210-007

CASE NO. BLNR-C-007-007

STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION

RECEIVED
Filed a motion, application and/or request.

Were present, the following persons were determined to NOT be present despite having

In addition, after calling the following names to determine whether or not the individuals

N. F. F. L. (Puleo)
procedures inefficient and unmanageable.
new reception information or the addition will make the
(2) The admission of additional parties will not add substantially
position of a party already admitted to the proceedings; and
(1) The position of the requester is substantially the same as the

Other persons who can show a substantial interest in the matter
HAR § 13-1-13(c) provides the requirements for “discretionary admission”:

public shall be admitted upon timely application.
the procedure is clearly distinguishable from that of the general
the proceeding is clearly distinguishable from that of the general
immediately affected by the requested action that they interest in
who otherwise can demonstrate that they will be so directly and
lawfully reside on the land, who are adjacent property owners or
(2) All persons who have some property interest in the land, who
in question shall be admitted as party to that time application.
(1) All government agencies whose jurisdiction includes the land

The following persons or agencies shall be admitted as parties:
"mandatory admission":

set forth in HAR section 13-1-31. (q) and (c). HAR § 13-1-31 (q) provides the requirements for
The standards for admission as a party in a contested case proceeding and standing, are
additional information regarding the remaining motions, applications and requests.

No. 7, essentially, UH-Hilo supported the information requests of TIO and PUCO and made
UH-Hilo submitted a response to the requests to intervene as a party pursuant to Minute Order
Perpetuating Unique Educational Opportunities, Inc.'s motion to intervene, dated May 16, 2016.
Observatory, LTCC admitted as a party in the contested case hearing, and opposition to
"prevotors", submitted memoranda in opposition to TIO's motion to have TMT International
Hearing Officer found good cause existed for the late filings.

* Cindy Freitas and William K. Freitas submitted their respective requests after the deadline. Upon inquiry, explanations were provided by the respondents and the representatives.

William K. Freitas
Cindy Freitas
Mae Lin Lee
Joseph Russell Lindsy Camara
Harry Pimentel
CM Kaho Oshin Kauhane
Melane Kihol

Hearing Officer in her decision making:

individuals are GRANTED because each individual's participation will substantially assist the

hearing.

Motion, Applications and/or Requests submitted by individuals who appeared at the

in her decision making.

Motion is GRANTED because PROOF of participation will substantially assist the Hearing Officer

Petitioning Lihue Educational Opportunity Inc., Motion to Intervene

her decision making.

The subject matter and because TJO's participation will substantially assist the Hearing Officer in

Consolidated Case Hearing. The TJO Motion is GRANTED due to TJO's substantial interest in

Motion to Have JMT Interests Dismissed as a Party in the

requests, oppositions, defenses, and the applicable law, the Hearing Officer decided the following:

After full consideration of the record, arguments, representations, motions, applications,
Standing to Participate in the Contested Case

PARTIES:

Moses Kekaulukaua, Jr.
Willa H. Ho'i
Ivy Nakashima
Crystal P. West

OFFICER WITTNESS at the contested case hearing:

Motions, Applications and/or Requests submitted by Individuals appearing at the

In this proceeding, the following individuals will either request and will instead be called as Hearers:

Michael Cebasek
Joy Kauhiukunaweku Wills-Ferten
Linda Nani
Rick Cassiday, Trustee; Mary Lucas Esfelle
Eric Hansen
Kealohelono
Michael Lee
Holoakamukana Milka-Jiro Fukuomio
Wa'aale Ahia
Edward K. Aiona
Ana Naehilime-Kaho'opii

Appear at the hearing are DISMISSED for lack of prosecution:

The motions, applications and/or requests submitted by the following individuals who failed to

The Hawaii Supreme Court has been especially liberal in its standing decisions in land use cases. See, e.g., Life of the Land v. Land.

If any of the above mentioned individuals wishes to have their dismissal reconsidered, he or she may file a Motion to Reconside, no later than August 1, 2016, to be heard at the next hearing on August 5, 2016.

* I Larny Shinkin, is representing the Temple of Leono is allowed as an officer of the
| Deadline for Filing Motion to Reconsider Dismissal | August 1, 2016 |
| Deadline for Objections to Witness Lists |  |
| Deadline for Filing Responses to pre-hearing motions |  |
| Deadline for Filing Witness List (see attachment for formal) | July 18, 2016 |

**Deadline** The following dates and deadlines are hereby ordered:

- Immediately following the hearing on motions, applications and/or requests, the parties shall participate in a Second Pre-Hearing Conference.

**II. Second Pre-Hearing Conference**

- Brigham Kauhanana Kealoha
- Dwight J. Venette
- Glen Kilka
- TiHilino Keakailo
- Stephanie Mahi‘alapa
- Kalikolani Kanale
- Temple Ohno
- Naimy Shin
- Richard Miale
- Delanson
- William K. Price
- Cindy Price
- Macalani Lee
- Jennifer Seigle
- Joseph Kauhi Lindsley
- Carmela
- Harry Perreira
- C.M. Kala‘eo Okai
- Kahuna
- Meihana Kihot
- Perpetual Unified Educational Opportunities, Inc.
- ITU International Organization, ITU
- Hawaiian Environmental Alliance
- Professors Ohana, Dobin, J. Wachtel, Paul K. Never's, Kane‘e: The University of Hawaii – Hilo
- Waimuan Koa Aunahua Ho, Kealoha Piscione, Clarence Kaukahele Chin

The following have standing to participate in the consolidated case hearing as parties:

- U.S. Commission, 63 Haw. 166 (1981)
Service may be completed by e-mail.

Resources (465 South King Street, Room 300, Honolulu, Hawai‘i 96813). This
Deputy Attorney General Julie China, attorney for the Board of Land and Natural
2. In addition, copies of the filing/submission shall be sent to all other parties and
any submission must be contained in one single file.

lands („OCC") 1151 Punchbowl Street, Room 131, Honolulu, Hawai‘i 96813; no
later than 4:00 p.m. on the deadline set forth. To the extent possible, digital copies of
 submission must be received by the DNR Office of Conservation and Coastal

1. Both the original hard copy plus one digital copy in pdf or doc format of the
 other required papers.

Filing and/or submission of documents, including but not limited to motions, objections, and

Filing/Submission Procedures: All parties shall abide by the following procedures for
facilities if such arrangements can be accommodated and the facility is suitable.

Hearing Officer, no one had any objection to holding further hearings/meetings at a LH-Hilo
been handled given the number of parties and interested persons. Upon inquiry by the

Future Hearing/Meeting Sites: Arrangements for suitable hearing/meeting sites in Hilo has

Hilo, Hawai‘i 96720
300 W. Luankea Street
WMA

The hearing and conference will be held at:
Third Pre-Hearing Conference: attendance mandatory
Hearing on Pre-Hearing motions

(10:00 a.m. – 1:00 p.m.)
August 5, 2016
the Third Pre-Hearing Conference on August 5, 2016. The dates are tentative but parties should plan accordingly. Further discussion will be undertaken at this hearing. These days during the month of October will be scheduled for the evidentiary contested hearing. Depending on the number of witnesses and other logistics, several day inspection is being planned for one day.

Honolulu, Hawaii,

July 21, 2016

Heard and the Inspection Dates

Hearing Officer
Judge Riki May Amano (Ret.)
(Signature of Party or Lawyer)

DAT ED:

<table>
<thead>
<tr>
<th>Short description of area of testimony</th>
<th>Address</th>
<th>Name of Witness</th>
</tr>
</thead>
</table>

**Witness List**

| T.M.K (3) 4-4-015:09 609 Reserve K<sub>3</sub> The Mauna Kea, Hamakua, Hawaii!
| Thirty Meter Telescope at the Mauna Kea Science |
| Use Application (CUL) HA-3568 For The |
| Consecrated Case Hearing Re Conservation District |

CASE NO. BLNR-CC-16-002

IN THE MATTER OF

STATE OF HAWAI'I

BOARD OF LAND AND NATURAL RESOURCES
Certificate of Service

State of Hawaii,

Board of Land and Natural Resources

Document title: Minute Order 13
BLNR Contested Case HA-16-02

For the Thirty Minute Hearing at the Mauna Kea District Use Application (CDUA) HA-3568

Certificate of Service

Date: July 22, 2016

Name (First): Michelle Cam, Custodian of the Records

Signature:

Party(s) to whom the above referenced document was served upon the following parties by the means indicated:

The undersigned hereby certify that the above referenced document was served upon the following parties by the means indicated:

Certificate of Service
CERTIFICATE OF SERVICE

COURT HOUSE

date: Honolulu, Hawaii, August 26, 2016

[signature]  [signature]

Richard L. Deacon
Hilary Poist
Leonard P. Byers
Richard Deacon
Richard Deacon

Hilo, Hawaii, Kingdom of Hawaii
2608 Ahuaok Drive
Dwight J. Vervine
Brian Kanaha
Brian Kanaha

John Kua
John Kua

4.6760 P.O. Box 591
Hawaii Post Office

Hana, Maui, Kingdom of Hawaii
2393 Hana Highway
Dwight J. Vervine
Brian Kanaha
Brian Kanaha

Hana, Maui, Kingdom of Hawaii
2393 Hana Highway
Dwight J. Vervine
Brian Kanaha
Brian Kanaha

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

CERTIFICATE OF SERVICE

BLNR Conceded Case HNa-16-02

STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

601 South King Street
Honolulu, Hawaii, 96813

Keaakala Reserve, Kokea, Maui
for the Thirty Meter Telescope at the Mauna Kea Science Reserve.

District Use Application (CDUA) HNa-3586

Conceded Case Hearing, Re-Conservation

Kahului, Kahului, Maui