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WATANABE ING LLP  
A Limited Liability Law Partnership

**J. DOUGLAS ING** #1538-0  
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Attorneys for  
**TMT INTERNATIONAL OBSERVATORY, LLC**

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

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 REQUEST FOR  
BOARD TO ACT UPON DENIAL OF  
INTERVENTION PURSUANT TO HAR §  
13-1-31(G); DECLARATION OF ROSS T.  
SHINYAMA; EXHIBIT "1";  
CERTIFICATE OF SERVICE**

**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.

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DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

**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]<sup>1</sup>, 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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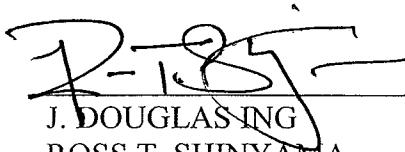
<sup>1</sup> See Exhibit "1" to the Declaration of Ross T. Shinyama.

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.

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

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

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

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

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015:009

IN THE MATTER OF

FOR THE STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

TMT INTERNATIONAL OBSERVATORY, LLC  
Attorneys for

J. DOUGLAS ING #1538-0  
ROSS T. SHINYAMA #8830-0  
SUMMER H. KAIWE #9599-0  
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WATANABE ING LLP  
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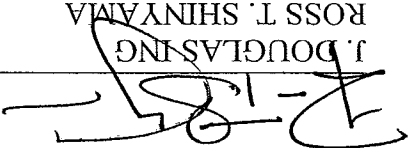
<sup>1</sup> See Exhibit "1" to the Declaration of Ross T. Shinoyama.

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**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.

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

BOARD OF LAND AND NATURAL RESOURCES  
FOR THE STATE OF HAWAII

DECLARATION OF ROSS T.  
SHINYAMA; EXHIBIT "1";

Case No. BLNR-CC-16-002

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, Kaohae Mauka, Hamakua  
District, Island of Hawaii, TMK (3) 4-4-  
015:009

**DECLARATION OF ROSS T. SHINYAMA**

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

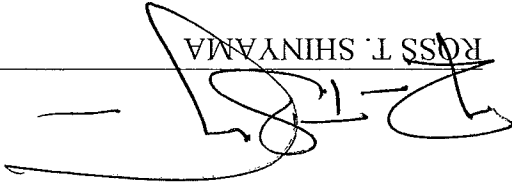
1. I am an attorney licensed to practice law in the State of Hawaii and am one of the attorneys representing TMT International Observatory LLC, a non-profit organization ("TIO") in the above-captioned matter.

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.

3. Exhibit "1" attached hereto is a true and correct copy of Minute Order No. 13 [Doc-115], which was filed in the above-captioned matter on July 21, 2016.

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

DATED: Honolulu, Hawaii, August 26, 2016.

  
ROSS T. SHINYAMA

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**MINUTE ORDER NO. 13**

**(Hearing on Admission or Intervention As A Party; Second Pre-Hearing Conference)**

**I. Hearing on Admission or Intervention As A Party. On June 17, 2016, a hearing on**

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

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

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

Mauna Kea Anaina Hou, for and with Clarence Kukauakahi Ching, Deborah J. Ward, Kealoha

Pisciotta and Pua Case; and Timothy Lui-Kwan, Esq., Ian Sandison, Esq. and John P. Manaut,

Esq. for the University of Hawaii ("UH-Hilo").

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

and/or request:

Maile Taualii PhD, MPH and Danelle Cooper MPH submitted a Request to Be Admitted as a party in the contested Case Hearing for CDUP HA-3568 for the Thirty Meter Telescope in the Mauna Kea Lands, Ka'ohé, Hamakua District, Island of Hawaii; TMK (3) 4-4-015:009. However, their Request was withdrawn prior to the hearing on June 17, 2016.



J. Douglas Ing, Esq. for TMT International Observatory, LLC. ("TIO")  
Mehana Kihoi  
C.M. Kaho'okahi Kanuha  
Harry Fergersstrom  
Joseph Kualii Lindsey Camara  
Jennifer Leina'ala Sleightholm  
Lincoln Ashida, Esq. for Perpetuating Unique Educational Opportunities,  
Inc. ("PUEO")  
Maelani Lee  
Cindy Freitas  
William K. Freitas  
Richard Maele DeLeon  
Kalikolehna Kanaele  
Stephanie-Malia:Tabbada  
Tiffnie Kakalia  
Glen Kila  
Dwight J. Vicente  
Brannon Kamahana Kealoha  
Lanny Alan Sinkin for Lono Temple  
Crystal F. West  
Ivy McIntosh  
Wilma H. Holi  
Moses Kealamakia, Jr.  
Patricia Ikeda

In addition, after calling the following names to determine whether or not the individuals were present, the following persons were determined to NOT be present despite having timely filed a motion, application and/or request:

Ana Nawahine-Kaho'opi'i  
Edward K. Aiona  
Wai'ala Ahn  
Holomai'kaiopuna Mikala-Jiro Fukutomi  
Michael Lee  
Keahi Tajon  
Eric Hansen  
Rick Cassidy, Trustee; Mary Lucas Estate  
Linda Namauu  
Joy Keahipunakauikawekiu Mills-Ferren  
Michelle Cabalse

Mauna Kea Anaina Hou, Kealoha Pisciotta, Clarence Kukauakahi Ching, Flores-Case  
Ohana, Deborah J. Ward, Paul K. Neves and Kahea: The Hawaiian Environmental Alliance

(“Petitioners”), submitted memoranda in opposition to TIO’s Motion to Have TMT International Observatory, LLC Admitted as a Party in the Contested Case Hearing, and Opposition to Perpetuating Unique Educational Opportunities, Inc.’s Motion to Intervene, Dated May 16, 2016, UH-Hilo submitted a Response to the Requests to Intervene as a Party Pursuant to Minute Order No. 7. Essentially, UH-Hilo supported the intervention requests of TIO and PUEO and bade additional information regarding the remaining motions, applications and requests. The standards for admission as a party in a contested case proceeding and standing, are set forth in HAR Section 13-1-31 (b) and (c). HAR § 13-1-31(b) provides the requirements for “mandatory admission”:

The following persons or agencies shall be admitted as parties:

(1) All government agencies whose jurisdiction includes the land in question shall be admitted as parties upon timely application.

(2) All persons who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the requested action that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted upon timely application.

HAR § 13-1-31(c) provides the requirements for “discretionary admission”:

Other persons who can show a substantial interest in the matter may be admitted as parties. The board may approve such requests if it finds that the requestor’s participation will substantially assist the board in its decision making. The board may deny any request to be a party when it appears that:

(1) The position of the requestor is substantially the same as the position of a party already admitted to the proceedings; and

(2) The admission of additional parties will not add substantially new relevant information or the addition will make the proceedings inefficient and unmanageable.

\*Cindy Freitas and William K. Freitas submitted their respective requests after the deadline. Upon inquiry, explanations were proffered by the requestors and the Hearing Officer found good cause existed for the late filings.

- Mehana Kihoi
- C.M. Kaho'okahi Kanuha
- Harry Fergestrom
- Joseph Kualii Lindsey Camara
- Jennifer Leina'ala Sleightholm
- Maelani Lee
- Cindy Freitas\*
- William K. Freitas\*
- Richard Maele DeLeon
- Temple of Lono by Lanny Sinkin\*\*
- Kalikolehua Kanaele
- Stephanie-Malia:Tabbada
- Tiffnie Kakalia
- Glen Kila
- Dwight J. Vicente
- Brannon Kamahana Kealoha

Hearing Officer in her decision making:

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

*hearing.* Motions, applications and/or requests to intervene submitted by the following

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

in her decision making.

Motion is GRANTED because PUEO's participation will substantially assist the Hearing Officer

*Perpetuating Unique Educational Opportunities, Inc's Motion to Intervene.* PUEO's

her decision making.

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

*Contested Case Hearing.* The TIO Motion is GRANTED due to TIO's substantial interest in

*Motion to Have TMT International Observatory, LLC Admitted As A Party in the*

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

After full consideration of the record, arguments, representations, motions, applications,

\*\*Lanny Sinkin's representation of the Temple of Lono is allowed as an officer of the organization and subject to submission of a Declaration confirming the same.

**Motions, Applications and/or Requests submitted by individuals who failed to appear.**

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

appear at the hearing are DISMISSED for lack of prosecution:

- Ana Nawahine-Kaho'opi'i
- Edward K. Aiona
- War'ala Ahn
- Holonaikaiopuna Mikala-Jiro Fukutomi
- Michael Lee
- Keahi Tajon
- Eric Hansen
- Rick Cassidy, Trustee; Mary Lucas Estate
- Linda Namauu
- Joy Keahipaukawkawekiu Mills-Ferren
- Michelle Cabalse

If any of the aforementioned individuals wishes to have their dismissal reconsidered, he

or she may file a Motion to Reconsider Dismissal, no later than August 1, 2016, to be heard

in Hilo at the next hearing on August 5, 2016.

**Motions, Applications and/or Requests withdrawn by individuals appearing at the**

**hearing.** The following individuals withdrew their requests and will instead be called as Hearing

Officer WITNESSES at the contested case hearing:

- Crystal F. West
- Ivy McIntosh
- Wilma H. Holi
- Moses Kealamakia, Jr.
- Patricia Ikeda

**Standing to Participate in the Contested Case.** The Hawai'i Supreme Court has been

especially liberal in its standing decisions in land use cases. See, e.g., *Life of the Land v. Land*

Use Commission, 63 Haw. 166 (1981). Based on the foregoing, the Hearing Officer finds that

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

- University of Hawai'i – Hilo
- Mauna Kea Anaina Hou, Kealoha Pisciotta, Clarence Kukuanakahi Ching, Flores-Case Ohana, Deborah J. Ward, Paul K. Neves, Kahae. The Hawaiian Environmental Alliance
- TMT International Observatory, LLC
- Perpetuating Unique Educational Opportunities, Inc.
- Mehana Kihoi
- C.M. Kaho'okahi Kanuha
- Harry Fergerstrom
- Joseph Kualii Lindsey Camara
- Jennifer Leina'ala Sleightholm
- Maelani Lee
- Cindy Freitas
- William K. Freitas
- Richard Maele DeLeon
- Temple of Lono by Lanny Sinkin
- Kalikohehua Kanaele
- Stephanie-Malia:Tabbada
- Tiffnie Kakalia
- Glen Kila
- Dwight J. Vicente
- Bannon Kamahana Kealoha

**II. Second Pre-Hearing Conference.**

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

*Dates/Deadlines.* The following dates and deadlines are hereby Ordered:

July 18, 2016	Deadline for filing pre-hearing motions Deadline for filing Witness Lists (see attachment for format (if you have already filed your Witness List in another format, please resubmit using the attached format; the earlier date will be considered your filing date)
August 1, 2016	Deadline for filing Responses to pre-hearing motions Deadline for Objections to Witness Lists Deadline for filing Motion to Reconsider Dismissal

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 Resources (465 South King Street, Room 300, Honolulu, Hawai'i 96813). This

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.
1. Both the original hard copy plus one digital copy in pdf or doc format of the filing/submission must be received by the DLNR Office of Conservation and Coastal Lands ("OCCCL"), 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

other required papers.

*Filing/Submission Procedures.* All parties shall abide by the following procedures for filing and/or submission of documents, including but not limited to motions, objections, and other required papers.

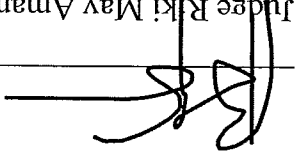
*Future Hearing/Meeting Site.* Arranging for suitable hearing/meeting sites in Hilo has been challenging given the number of parties and interested persons. Upon inquiry by the Hearing Officer, no one had any objection to holding future hearings/meetings at a UH-Hilo facility if such arrangements can be accommodated and the facility is suitable.

<p>Hearing on pre-hearing motions Third Pre-hearing conference; attendance mandatory The hearing and conference will be held at: YMCA 300 W. Lanikaula Street Hilo, Hawai'i 96720</p>	<p>August 5, 2016 (10:00 a.m. – 1:00 p.m.)</p>
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**Hearing and Site Inspection Dates.** A site inspection is being planned for one day

during the month of August. Depending on the number of witnesses and other logistics, several days during the month of October will be scheduled for the evidentiary contested hearing. These dates are tentative but parties should plan accordingly. Further discussion will be undertaken at the Third Pre-Hearing Conference on August 5, 2016.

DATED: Honolulu, Hawaii, July 21, 2016



Judge Riki May Amano (Ret.)  
Hearing Officer





BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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

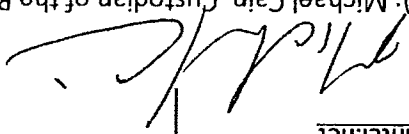
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 District Use Application (CDUA) HA-3568  
 for the Thirty Meter Telescope at the Mauna  
 Kea Science Reserve, Ka'ohē Mauka,  
 Hāmākua, Hawaii, TMK (3) 4-4-015:009

CERTIFICATE OF SERVICE

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

Michael Cain	Harry Fergerstrom	hankhawalian@yahoo.com	Tiffnie Kakalia	tiffniekakalia@gmail.com
Office of Conservation and Coastal Lands	Richard L DeLeon	kekaukike@msn.com	Glen Kila	makakila@gmail.com
1151 Punchbowl, Room 131 Honolulu, HI 96813	Mehana Kihoi	whiwal@live.com	Dwight J. Vicente	2608 Ainaola Drive Hilo, Hawaiian Kingdom
Judge Riki May Amano (Ret.) rma3cc@yahoo.com	C. M. Kaho'okahi Kanuha	kahookahi@gmail.com	Brannon Kamahana Kealoha	brannonk@hawaii.edu
Hearing Officer	Joseph Kuaili Lindsey Camara	kuaili@hotmail.com	Cindy Freitas	hanahanai@hawaii.rr.com
Julie China, Deputy Attorney General	Torkildson, Katz, Moore, Hetherington & Harris	isa@torkildson.com nic@torkildson.com	William Freitas	poahaku7@yahoo.com
Carlsmith Ball LLP isandison@carlsmith.com	Counsel for the Board of Land and Natural Resources	Counsel for Perpetuating Unique Educational Opportunities (PUEO)	Wilma H. Holi	P. O. Box 368 Hanapepe, HI 96716
Hawaii' at Hilo Counsel for the applicant University of	J. Leina'ala Sleightholm leina.ala.s808@gmail.com	Maelani Lee maelanilee@yahoo.com	Ivy McIntosh	3popoki@gmail.com
Richard N. Wurdeman RNWurdeman@RNWLAW.com	Maelani Lee maelanilee@yahoo.com	Lanny Alan Sinkin lanny.sinkin@gmail.com	Moses Kealamakia, Jr.	mkealamama@yahoo.com
Counsel for the petitioners Mauna Kea Anaina Hou, Clarence Kukaokahi Ching, Flores-Case 'Ohana, Deborah J. Ward, Paul K. Neves, and Kahoa: The Environmental Alliance	Representative for The Temple of Lono	Crystal W. West crystalinx@yahoo.com	Patricia Ikeda	pehekeania@gmail.com
Watanabe Ing LLP rshinyama@wik.com douging@wik.com	Kalikoheua Kanaele akulele@yahoo.com	Stephanie-Malia:Tabbada s.tabbada@hawaiiintel.net		
Counsel for TMT International Observatory, LLC				

Signature:



Name (Print): Michael Cain, Custodian of the Records

Date: July 21, 2016

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

BLNR Contested Case HA-16-02

CERTIFICATE OF SERVICE

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

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

Harry Fergerstrom P.O. Box 951 Kurtistown, HI 96760	Mehana Kihoi mhiwai@live.com	Michael Cain Office of Conservation and Coastal Lands 1151 Punchbowl, Room 131 Honolulu, HI 96813 michael.cain@hawaii.gov <i>(original + digital copy)</i>
Stephanie-Malia Tabbada s.tabbada@hawaiiantel.net	C. M. Kaho'okahi Kanuha kahoookahi@gmail.com	Office of Conservation and Coastal Lands Office of Conservation and Coastal Lands dlhr.maunakea@hawaii.gov
Tiffnie Kakalia tiffniekakalia@gmail.com	Joseph Kuahii Lindsey Camara kuahii@hotmail.com	Carlsmith Ball LLP isandison@carlsmith.com Counsel for the applicant University of Hawai'i at Hilo
Glen Kila makakila@gmail.com	Hetherington & Harris isa@torkildson.com njc@torkildson.com	Richard N. Wurdeman RNWurdeman@RNWLAW.com Counsel for the petitioners Mauna Kea Anaina Hou, Clarence Kukaauakahi Ching, Flores-Case 'Ohana, Deborah J. Ward, Paul K. Neves, and Kahae: The Environmental Alliance
Dwight J. Vicente 2608 Aimaola Drive Hilo, Hawaiian Kingdom	J. Leinala Steigtholm leinala.mamana@gmail.com	Richard N. Wurdeman RNWurdeman@RNWLAW.com Counsel for the petitioners Mauna Kea Anaina Hou, Clarence Kukaauakahi Ching, Flores-Case 'Ohana, Deborah J. Ward, Paul K. Neves, and Kahae: The Environmental Alliance
Brannon Kamahana Kealoha brannonk@hawaii.edu	Maelani Lee maelanilee@yahoo.com	Richard N. Wurdeman RNWurdeman@RNWLAW.com Counsel for the petitioners Mauna Kea Anaina Hou, Clarence Kukaauakahi Ching, Flores-Case 'Ohana, Deborah J. Ward, Paul K. Neves, and Kahae: The Environmental Alliance
Cindy Freitas hanahanai@hawaii.tr.com	Lanny Alan Sinkin lanny.sinkin@gmail.com	Richard N. Wurdeman RNWurdeman@RNWLAW.com Counsel for the petitioners Mauna Kea Anaina Hou, Clarence Kukaauakahi Ching, Flores-Case 'Ohana, Deborah J. Ward, Paul K. Neves, and Kahae: The Environmental Alliance
William Freitas pohaku7@yahoo.com	Representative for The Temple of Lono	Richard N. Wurdeman RNWurdeman@RNWLAW.com Counsel for the petitioners Mauna Kea Anaina Hou, Clarence Kukaauakahi Ching, Flores-Case 'Ohana, Deborah J. Ward, Paul K. Neves, and Kahae: The Environmental Alliance
Richard L. DeLeon kekaukike@msn.com		Richard N. Wurdeman RNWurdeman@RNWLAW.com Counsel for the petitioners Mauna Kea Anaina Hou, Clarence Kukaauakahi Ching, Flores-Case 'Ohana, Deborah J. Ward, Paul K. Neves, and Kahae: The Environmental Alliance

DATED: Honolulu, Hawaii, August 26, 2016.

J. DOUGLAS ING  
ROSS T. SHINYAMA  
SUMMER H. KAIWAWE

Attorneys for TMT International Observatory LLC