

CARLSMITH BALL LLP

IAN L. SANDISON 5597  
TIM LUI-KWAN 2271  
JOHN P. MANAUT 3989  
ASB Tower, Suite 2100  
1001 Bishop Street  
Honolulu, HI 96813  
Tel No. 808.523.2500  
Fax No. 808.523.0842  
[isandison@carlsmith.com](mailto:isandison@carlsmith.com)  
[tluikwan@carlsmith.com](mailto:tluikwan@carlsmith.com)  
[JPM@carlsmith.com](mailto:JPM@carlsmith.com)

Attorneys for Applicant  
UNIVERSITY OF HAWAI'I AT HILO

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DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

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

Case No. BLNR-CC-16-002

**THE UNIVERSITY OF HAWAI'I AT HILO'S  
RESPONSE IN SUPPORT OF  
PERPETUATING UNIQUE  
EDUCATIONAL OPPORTUNITIES,  
INC.'S PROPOSED MINUTE ORDER  
GRANTING PUEO'S MOTION TO SET  
ISSUES (DOC-99) [DOC. 256];  
CERTIFICATE OF SERVICE**

**THE UNIVERSITY OF HAWAI'I AT HILO'S  
RESPONSE IN SUPPORT OF PERPETUATING UNIQUE EDUCATIONAL  
OPPORTUNITIES, INC.'S ("PUEO") PROPOSED MINUTE ORDER GRANTING  
PUEO'S MOTION TO SET ISSUES (DOC-99) [DOC. 256]**

Applicant UNIVERSITY OF HAWAI'I AT HILO ("**University**"), through counsel,  
submits this Response in Support of *Perpetuating Unique Educational Opportunities, Inc.'s*  
*("PUEO") Proposed Minute Order Granting PUEO's Motion to Set Issues (Doc-99) [Doc. 256]*  
**("Proposed Order")**.

The University generally supports PUEO's Proposed Order and offers the following

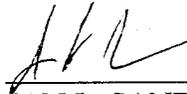
additional comments:

The only issue to be decided in this contested case hearing and the only issue that the Board of Land and Natural Resources (“**Board**”), through the Hearing Officer in this proceeding, has jurisdiction to decide, is whether or not the Conservation District Use Application (“**CDUA**”) for the Thirty-Meter Telescope project (“**Project**”) satisfies the requirements set forth in Hawai‘i Administrative Rules (“**HAR**”) § 13-5-30(c).

The State and its agencies have an obligation to protect native Hawaiian traditional and customary practices, subject to the right of the State to regulate such rights. In this case, the policy considerations underlying the public trust doctrine, Article XII, section 7 of the Hawai‘i Constitution, and *Ka Pa ‘akai o Ka ‘Āina v. Land Use Comm’n*, are already necessarily encompassed within the Board’s duty to consider the criteria in HAR § 13-5-30(c), and should be considered only to the extent that they are relevant to the Board’s analysis of the CDUA in terms of the eight criteria of HAR § 13-5-30(c). There is no basis to consider these issues as separate claims in this proceeding, and the Board lacks jurisdiction to hear or decide such distinct claims.

The University reiterates that issues or challenges related to the legal status of the State of Hawai‘i, the purported existence or sovereignty of the Kingdom of Hawai‘i, and challenges to the State of Hawai‘i’s ownership of and/or title to lands comprising the University-managed lands on Mauna Kea are *not* issues that will be addressed in this contested case hearing as the Board does not have jurisdiction to decide such issues. Moreover, the Board has already rejected challenges to the legal status of the State of Hawai‘i and the State’s ownership of the lands at issue. *See* Minute Order 14 at 2 [DOC. 124]; *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009). These issues do not need to be relitigated here.

DATED: Honolulu, Hawai'i, September 19, 2016.



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IAN L. SANDISON

TIM LUI-KWAN

JOHN P. MANAUT

Attorneys for Applicant

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BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

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Contested Case Hearing Re Conservation  
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CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

DLNR Office of Conservation and Coastal  
Lands ("OCCL")  
[dlnr.maunakea@hawaii.gov](mailto:dlnr.maunakea@hawaii.gov)

MICHAEL CAIN  
Office of Conservation and Coastal Lands  
1151 Punchbowl Street, Room 131  
Honolulu, HI 96813  
[michael.cain@hawaii.gov](mailto:michael.cain@hawaii.gov)  
*Custodian of the Records*  
*(original + digital copy)*

DAVE M. LOUIE, ESQ.  
CLIFFORD K. HIGA, ESQ.  
NICHOLAS R. MONLUX, ESQ.  
Kobayashi Sugita & Goda, LLP  
[dml@ksglaw.com](mailto:dml@ksglaw.com)  
[ckh@ksglaw.com](mailto:ckh@ksglaw.com)  
[nrm@ksglaw.com](mailto:nrm@ksglaw.com)  
*Special Deputy Attorneys General for*  
*ATTORNEY GENERAL DOUGLAS S. CHIN,*  
*THE DEPARTMENT OF THE ATTORNEY*  
*GENERAL, and DEPUTY ATTORNEYS*  
*GENERAL IN THEIR CAPACITY AS*  
*COUNSEL FOR THE BOARD OF LAND AND*  
*NATURAL RESOURCES and HEARING*  
*OFFICER*

WILLIAM J. WYNHOFF, ESQ.  
Deputy Attorney General  
[bill.j.wynhoff@hawaii.gov](mailto:bill.j.wynhoff@hawaii.gov)  
*Counsel for the BOARD OF LAND AND*  
*NATURAL RESOURCES*

J. DOUGLAS ING, ESQ.  
[douging@wik.com](mailto:douging@wik.com)  
ROSS T. SHINYAMA, ESQ.  
[rshinyama@wik.com](mailto:rshinyama@wik.com)  
Watanabe Ing LLP  
*Counsel for TMT INTERNATIONAL  
OBSERVATORY, LLC*

RICHARD NAIWIEHA WURDEMAN, ESQ.  
[rnwurdeman@rnwlaw.com](mailto:rnwurdeman@rnwlaw.com)  
*Counsel for Petitioners MAUNA KEA ANAINA  
HOU; CLARENCE KUKAUAKAHI CHING;  
FLORES-CASE OHANA; DEBORAH J.  
WARD; PAUL K. NEVES; and KAHEA: THE  
HAWAIIAN ENVIRONMENTAL ALLIANCE*

JOSEPH KUALII LINDSEY CAMARA  
[kualiic@hotmail.com](mailto:kualiic@hotmail.com)

HARRY FERGERSTROM  
P.O. Box 951  
Kurtistown, HI 96750  
[hankhawaiian@yahoo.com](mailto:hankhawaiian@yahoo.com)  
*(via email & U.S. mail)*

WILLIAM FREITAS  
[pohaku7@yahoo.com](mailto:pohaku7@yahoo.com)

TIFFNIE KAKALIA  
[tiffniekakalia@gmail.com](mailto:tiffniekakalia@gmail.com)

BRANNON KAMAHANA KEALOHA  
[brannonk@hawaii.edu](mailto:brannonk@hawaii.edu)

GLEN KILA  
[makakila@gmail.com](mailto:makakila@gmail.com)

JENNIFER LEINA'ALA SLEIGHTHOLM  
[leina.ala.s808@gmail.com](mailto:leina.ala.s808@gmail.com)

LANNY ALAN SINKIN  
[lanny.sinkin@gmail.com](mailto:lanny.sinkin@gmail.com)  
*Representative for the Temple of Lono*

LINCOLN S.T. ASHIDA, ESQ.  
[lsa@torkildson.com](mailto:lsa@torkildson.com)  
NEWTON J. CHU, ESQ.  
[njc@torkildson.com](mailto:njc@torkildson.com)  
Torkildson, Katz, Moore, Hetherington &  
Harris  
*Counsel for PERPETUATING UNIQUE  
EDUCATIONAL OPPORTUNITIES (PUEO)*

DWIGHT J. VICENTE  
2608 Ainaola Drive  
Hilo, HI 96720-3538  
*(no email; mailing address only)*

RICHARD L. DELEON  
[kekaukike@msn.com](mailto:kekaukike@msn.com)

CINDY FREITAS  
[hanahanai@hawaii.rr.com](mailto:hanahanai@hawaii.rr.com)

C. M. KAHO'OKAHI KANUHA  
[kahookahi@gmail.com](mailto:kahookahi@gmail.com)

KALIKOLEHUA KANAEL  
[akulele@yahoo.com](mailto:akulele@yahoo.com)

MEHANA KIHAI  
[uhiwai@live.com](mailto:uhiwai@live.com)

MAELANI LEE  
[maelanilee@yahoo.com](mailto:maelanilee@yahoo.com)

STEPHANIE-MALIA:TABBADA  
[s.tabbada@hawaiiantel.net](mailto:s.tabbada@hawaiiantel.net)

HARVEY E. HENDERSON, JR., ESQ.,  
Deputy Attorney General  
[harvey.e.hendersonjr@hawaii.gov](mailto:harvey.e.hendersonjr@hawaii.gov)  
*Counsel for the Honorable DAVID Y. IGE, and  
BLNR Members SUZANNE CASE and  
STANLEY ROEHRIG*

DATED: Honolulu, Hawai'i, September 19, 2016.



---

IAN L. SANDISON  
TIM LUI-KWAN  
JOHN P. MANAUT

Attorneys for Applicant  
UNIVERSITY OF HAWAI'I AT HILO