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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-
015:009

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Case No. BLNR-CC-16-002

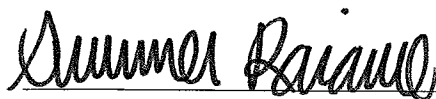
**TMT INTERNATIONAL
OBSERVATORY, LLC'S RESPONSE TO
PERPETUATING UNIQUE
EDUCATIONAL OPPORTUNITIES,
INC.'S PROPOSED MINUTE ORDER
GRANTING PERPETUATING UNIQUE
EDUCATIONAL OPPORTUNITIES,
INC.'S MOTION TO SET THE ISSUES
[DOC. 256]; EXHIBITS "1"- "2";
CERTIFICATE OF SERVICE**

**TMT INTERNATIONAL OBSERVATORY, LLC'S
RESPONSE TO PERPETUATING UNIQUE EDUCATIONAL
OPPORTUNITIES, INC.'S PROPOSED MINUTE ORDER GRANTING
PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.'S
MOTION TO SET THE ISSUES [DOC. 256]**

TMT International Observatory, LLC ("TIO"), by and through its undersigned counsel, hereby respectfully submits its Response to Perpetuating Unique Educational Opportunities, Inc.'s Proposed Minute Order Granting its Motion to Set the Issues [Doc. 256] (the "Minute Order"). TIO supports the form of the Minute Order, subject to the following revision. With regard to the list of the issues that may be addressed during this contested case hearing, TIO requests that the Minute Order be revised to include the issue: "Should the Board of Land and Natural Resources consent to the Sublease of General Lease No. S-4191 between the University of Hawaii, as lessee and Sublessor, and TIO, as Sublessee?"

For clarity and ease of reference, copies of a proposed revised Minute Order is attached in clean and redline formats attached hereto as Exhibits "1" and "2," respectively.

DATED: Honolulu, Hawaii, September 19, 2016.



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

EXHIBIT "1"
REVISED MINUTE ORDER
(CLEAN FORMAT)

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) 4-4-015:009

Case No. BLNR-CC-16-002

Minute Order No. __
(Granting Perpetuating Unique Educational Opportunities, Inc.'s Motion To Set Issues [Doc-99])

Minute Order No. __

(Granting Perpetuating Unique Educational Opportunities, Inc.'s Motion To Set Issues [Doc-99])

On July 18, 2016, Perpetuating Unique Educational Opportunities, Inc. ("PUEO") filed its Motion to Set Issues [Doc-99] ("Motion"). The following documents were filed in response to the Motion:

- On July 20, 2016, the Temple of Lono filed its opposition to the Motion [Doc-119].
- On August 1, 2016, the University of Hawai'i at Hilo ("UHH") filed its substantive joinder to the Motion [Doc-140].
- On August 1, 2016, TMT International Observatory, LLC ("TIO") filed its substantive joinder to the Motion [Doc-152].
- On August 1, 2016, Petitioners Mauna Kea Anaina Hou, et al. filed its position statement to the Motion [Doc-164].
- On August 9, 2016, Harry Fergerstrom ("Mr. Fergerstrom") filed his opposition to the Motion [Doc-186].

- On August 10, 2016, Mehana Kihoi filed a joinder to Mr. Fergerstrom's opposition to the Motion [Doc-195].
- On August 22, 2016, UHH filed its supplemental comments on the Motion [Doc-242].

The Motion came on for hearing before this Hearings Officer on August 29, 2016. Per the request of this Hearings Officer at the hearing, PUEO submitted its proposed minute order granting the Motion on September 9, 2016. The parties had until September 19, 2016 to respond to PUEO's proposed minute order.

This Hearings Officer having considered the Motion, all other written and oral submissions of counsel and parties related thereto, the entire record, and for good cause shown,

IT IS HEREBY ORDERED that the Motion is GRANTED pursuant to Hawai'i Administrative Rules ("HAR") §13-1-36(a) and all other applicable rules of HAR Title 13, Chapter 1, Rules of Practice and Procedure. This Hearings Officer finds that the following issues may be addressed during this contested case hearing:

1. Is the proposed land use, including the plans incorporated in the application, consistent with the eight criteria in HAR § 13-5-30(c) and other applicable rules in HAR, Title 13, Chapter 5, Conservation District?
2. Is the proposed land use consistent with article XII, section 7 of the Hawai'i State Constitution?
3. Is the proposed land use consistent with Ka Pa'akai O Ka'Aina v. Land Use Comm'n, State of Hawai'i, 94 Hawai'i 31, 7 P.3d 1068 (2000)?
4. Is the proposed land use consistent with applicable provisions of Chapter 183C of the Hawai'i Revised Statutes?

5. Does the public trust doctrine apply to the proposed land use and, if it does, is the proposed land use consistent with the public trust doctrine?
6. Should the Board of Land and Natural Resources consent to the Sublease of General Lease No. S-4191 between the University of Hawaii, as lessee and Sublessor, and TIO, as Sublessee?

This Hearings Officer finds that the following issues will not be addressed in this contested case hearing:

1. The sovereignty of the Kingdom of Hawai'i or any other issues relating to the purported existence of the Kingdom of Hawai'i.
2. Challenges to the legal status of the State of Hawai'i.
3. Challenges to the State's ownership of and title to the lands comprising the summit area of Mauna Kea

The above issues present non-justiciable political questions that are outside the subject matter jurisdiction of this Hearings Officer and are therefore not issues for this contested case hearing.

Dated: Honolulu, Hawai'i, September 23, 2016

Judge Riki May Amano (Ret.)
Hearings Officer

EXHIBIT "2"

**REVISED MINUTE ORDER
(REDLINE FORMAT)**

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) 4-4-015:009

Case No. BLNR-CC-16-002

Minute Order No. _____
(Granting Perpetuating Unique Educational Opportunities, Inc.'s Motion To Set Issues [Doc-99])

Minute Order No. _____

(Granting Perpetuating Unique Educational Opportunities, Inc.'s Motion To Set Issues [Doc-99])

PROPOSED MINUTE ORDER GRANTING PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES, INC.'S MOTION TO SET ISSUES [Doc-99]

On July 18, 2016, Perpetuating Unique Educational Opportunities, Inc. ("PUEO") filed its Motion to Set Issues [Doc-99] ("Motion"). The following documents were filed in response to the Motion:

- On July 20, 2016, the Temple of Lono filed its opposition to the Motion [Doc-119].
- On August 1, 2016, the University of Hawai'i at Hilo ("UHH") filed its substantive joinder to the Motion [Doc-140].
- On August 1, 2016, TMT International Observatory, LLC ("TIO") filed its substantive joinder to the Motion [Doc-152].
- On August 1, 2016, Petitioners Mauna Kea Anaina Hou, et al. filed its position statement to the Motion [Doc-164].
- On August 9, 2016, Harry Fergerstrom ("Mr. Fergerstrom") filed his opposition to the Motion [Doc-186].

- On August 10, 2016, Mehana Kihoi filed a joinder to Mr. Fergerstrom's opposition to the Motion [Doc-195].
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The Motion came on for hearing before this Hearings Officer on August 29, 2016. Per the request of this Hearings Officer at the hearing, PUEO submitted its proposed minute order granting the Motion on September 9, 2016. The parties had until September 19, 2016 to respond to PUEO's proposed minute order.

This Hearings Officer having considered the Motion, all other written and oral submissions of counsel and parties related thereto, the entire record, and for good cause shown,

IT IS HEREBY ORDERED that the Motion is GRANTED pursuant to Hawai'i Administrative Rules ("HAR") §13-1-36(a) and all other applicable rules of HAR Title 13, Chapter 1, Rules of Practice and Procedure. This Hearings Officer finds that the following issues may be addressed during this contested case hearing:

1. Is the proposed land use, including the plans incorporated in the application, consistent with the eight criteria in HAR § 13-5-30(c) and other applicable rules in HAR, Title 13, Chapter 5, Conservation District?
2. Is the proposed land use consistent with article XII, section 7 of the Hawai'i State Constitution?
3. Is the proposed land use consistent with Ka Pa'akai O Ka'Aina v. Land Use Comm'n, State of Hawai'i, 94 Hawai'i 31, 7 P.3d 1068 (2000)?
4. Is the proposed land use consistent with applicable provisions of Chapter 183C of the Hawai'i Revised Statutes?

5. Does the public trust doctrine apply to the proposed land use and, if it does, is the proposed land use consistent with the public trust doctrine?

5.6. Should the Board of Land and Natural Resources consent to the Sublease of General Lease No. S-4191 between the University of Hawaii, as lessee and Sublessor, and TIO, as Sublessee?

This Hearings Officer finds that the following issues will not be addressed in this contested case hearing:

1. The sovereignty of the Kingdom of Hawai'i or any other issues relating to the purported existence of the Kingdom of Hawai'i.
2. Challenges to the legal status of the State of Hawai'i.
3. Challenges to the State's ownership of and title to the lands comprising the summit area of Mauna Kea

The above issues present non-justiciable political questions that are outside the subject matter jurisdiction of this Hearings Officer and are therefore not issues for this contested case hearing.

Dated: Honolulu, Hawai'i, September 23, 2016

Judge Riki May Amano (Ret.)
Hearings Officer

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

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

BLNR Contested Case HA-16-02

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

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

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