

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF)	CASE NO. BLNR-CC-16-002
)	
Contested Case Hearing Re Conservation District)	Minute Order No. 19
Use Application (CDUA) HA-3568 For the)	(Order Granting Perpetuating Unique
Thirty Meter Telescope at the Mauna Kea Science)	Educational Opportunities, Inc.'s
Reserve, Ka`ohe Mauka, Hamakua, Hawai`i)	Motion to Set Issues Doc. 99; Order
TMK (3) 4-4-015:009)	Setting Issues)
_____)	Certificate of Service

MINUTE ORDER NO. 19

**(Order Granting Perpetuating Unique Educational Opportunities, Inc.'s
Motion to Set Issues Doc. 99; Order Setting Issues)**

On August 29, 2016, a hearing on Perpetuating Unique Educational Opportunities, Inc.'s Motion to Set Issues ("Motion") (Doc. 99), filed on July 18, 2016, was held in Hilo, Hawai`i, 1175 Manono Street, Cafeteria.

The following persons were present:

Richard N. Wurdeman, Esq., for Mauna Kea Anaina Hour, for and with Kealoha Pisciotta, Clarence Kukauakahi Ching, Pualani Case, Hawane Rios, Keomailani Van Gogh, and E. Kalani Flores
Timothy Lui-Kwan, Esq. and Ian Sandison, Esq. for the University of Hawai`i-Hilo ("UH-Hilo"), with David Lonborg, Esq.
J. Douglas Ing, Esq. and Ross Shinyama, Esq. for TMT International Observatory, LLC. ("TIO")
Harry Fergerstrom
Mehana Kihoi
C. M. Kaho`okahi Kanuha
Joseph Kualii Lindsey Camara
Lincoln Ashida, Esq. for Perpetuating Unique Educational Opportunities Inc. ("PUEO"), with Richard Ha, Keahi Warfield and Bill Brown
Jennifer Leina`ala Sleightholm
Lanny Alan Sinkin for Lono Temple with Kahuna Nobriga
Kalikolehua Kanaele
Tiffnie Kakalia

Received
Office of Conservation and Coastal Lands
2016 Sept 23 3:18 pm
Department of Land and Natural Resources
State of Hawaii

Dwight J. Vicente
 William Freitas
 Wilma H. Holi (witness)
 Patricia Ikeda (witness)

In relation to the Motion, the following documents were considered:

DOC	TITLE	DATE	COUNSEL/PARTY
119	Temple of Lono opposition to PUEO motion to set the issues	7/20/2016	Sinkin
140	The University of Hawai'i at Hilo's Substantive Joinder In Support of Perpetuating Unique Educational Opportunities' Motion To Set The Issues Filed July 18, 2016 [Doc. 99]	8/1/2016	UHH
152	TMT International Observatory, LLC's Substantive Joinder in Perpetuating Unique Educational Opportunities, Inc.'s Motion to Set the Issues [Doc. 99]	8/1/2016	TIO
164	Mauna Kea Anaina Hou, Et. Al. Petitioners' Position Statement On Perpetuating Unique Educational Opportunities, Inc.'s Motion to Set the Issues, Dated July 18, 2016	8/1/2016	MKAH
186	Fergerstrom opposition to PUEO's motion to set the issues; Memorandum	8/9/2016	Fergerstrom
195	Mehana Kihoi's joinder to Hank Fergerstrom's motion to oppose P.U.E.O. LLC's motion to set the issues	8/10/2016	Kihoi
196	The University of Hawai'i at Hilo's Objection to (1) Harry Fergerstrom's Opposition to Pueo's Motion to Set the Issues, Filed August 9, 2016 [Doc. 186]; (2) J. Leina'ala Sleightholm's Joinder to Hank Fergustrom's [SIC] Motion to Oppose Pueo's Motion to Set Issues, Filed August 10, 2016 [Doc. __]; and (3) Mehana Kihoi's Joinder to Hank Fergerstrom's Motion to Oppose P.U.E.O. LLC's Motion to Set the Issues, Filed August 10, 2016	8/11/2016	UHH
210	J. Leinaala Sleightolm's joinder to Hank Fergerstrom's motion to oppose PUEO's motion to set issues DOC 99	8/8/2016	Sleightholm
222	(Vicente) Objection of ("PUEO") motion to set the issue Doc 99	8/20/2016	Vicente
242	The University of Hawai'i at Hilo's supplemental comments on Perpetuating Unique Educational Opportunities, Inc.'s motion to set the issues [Doc 99]; Declaration of counsel; Exhibit "1"; COS DOC 99	8/22/2016	Lui-Kwan

After considering the Motion, all related written and oral submissions from counsels and/or parties, and the entire record, the Hearing Officer requested that PUEO counsel, Lincoln Ashida, Esq., submit a proposed minute order granting the Motion, no later than September 9, 2016. The Hearing Officer also established a deadline for responses to the proposal, September 19, 2016. Accordingly, subsequent to the hearing on August 29, 2016, the following submissions have been considered in relation to the Motion:

DOC	TITLE	DATE	COUNSEL/PARTY
256	Perpetuating Unique Educational Opportunities, Inc.'s proposed minute order granting Perpetuating Unique Educational Opportunities, Inc.'s motion to set issues [Doc-99]; Exhibit "A"	9/9/2016	Ashida
265	Temple of Lono proposed issues; Exhibit "A"	9/17/2016	Sinkin
266	Fergerstrom opposition to Perpetuating Unique Educational Opportunities, Inc.'s proposed minute order granting Perpetuating Unique Educational Opportunities, Inc.'s motion to set the issues	9/18/2016	Fergerstrom
267	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]	9/19/2016	UHH
268	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-99) [Doc 256]	9/19/2016	TIO
269	Joseph Lualii Lindsey Camara's response to Perpetuating Unique Educational Opportunities, Inc.'s proposed minute order granting Perpetuating Unique Educational Opportunities, Inc.'s motion to set the issues; Exhibit "A"	9/19/2016	Camara

270	Mauna Kea Anaina Hou, et al. Petitioners' response to P.U.E.O., Inc.'s proposed minute order granting P.U.E.O., Inc.'s motion to set issues	9/19/2016	MKAH
271	W Freitas respond to issue that all should be considered	9/19/2016	W. Freitas
272	Vicente objection to PUEO's motion to set the issues [Doc-99]	9/19/2016	Vicente
273	Kakalia addion [sic] to PUEO's motion to set issues [Doc-256]	9/19/2016	Kakalia
275	Tabbada response to Perpetuating Unique Educational Opportunities, Inc.'s proposed minute order motion to set the issues	9/19/2016	Tabbada

The Motion, all related and oral submissions from counsels and/or parties, the Proposed Minute Order and all submissions related thereto, all applicable law, for and the entire record having been considered by the Hearing Officer, and for good cause shown,

IT IS HEREBY ORDERED that the Motion is GRANTED. The following are found to be issues to be addressed during this contested case hearing:

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

The following issues **will not** be addressed in this contested case hearing inasmuch as: (1) they are not germane to the above-identified issues relating to this contested case hearing; and (2) the Hearing Officer has already been found to have subject matter jurisdiction to conduct the contested case hearing, as authorized by the Board; see, Minute Order 14 Denying Dwight J. Vicente's Motion to Disqualify Judge Riki Mae [sic] Amano (Ret.); State of Hawaii Lack of Jurisdiction to Hear This Contested Case Hearing [Doc. 124], citing the U.S. Supreme Court decision in *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009):

- The sovereignty of the Kingdom of Hawai'i or any other issues relating to the purported existence of the Kingdom of Hawai'i;
- Challenges to the legal status of the State of Hawai'i; and
- Challenges to the State's ownership of and title to the lands related to this contested case hearing.

Order Setting Issues. To the extent applicable, this Minute Order shall also serve as an Order Setting Issues pursuant to HRS §91-9(b)(4).

Motion to Reconsider. A party who believes it appropriate, may file a motion to reconsider using the procedure set out herein. Any Motion for Reconsideration shall not be used to reargue the motion or set out positions of a purely repetitious nature or to present factual or legal grounds that could or should have been presented at the original hearing. AMFAC, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114 (1992).

The deadline for submission of any **motion** to reconsider this minute order and/or the Order Setting Issues, is no later than **3 business days** after the date this motion and order are

filed in the Documents Library. Any **responses to motions to reconsider**, shall be submitted no later than **6 business days** after this motion and order are filed in the Documents Library.

DATED: Honolulu, Hawai`i, September 23, 2016.



Judge Riki May Amano (Ret.)
Hearing Officer

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

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

BLNR Contested Case HA-16-02
Minute Order 19: Order granting Perpetuating Unique
Educational Opportunities, Inc.'s motion to set the
issues Doc. 99; Order setting issues

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced document was served upon the following parties by email on Friday, September 23, 2016, and will be sent by certified mail on Monday, September 26, 2016:

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Name: Michael Cain, Custodian of the Records

Date: September 23, 2016